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CASE

OF

GENERAL FITZ-JOHN PORTER.

MR. CHOATE'S ARGUMENT FOR PETITIONER.

WEST POINT,

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ARGUMENT OF MR. CHOATE,

COUNSEL FOR THE PETITIONER.

Mr. CHOATE said: If the Board please, I will, as briefly as I can, conclude the argument on the part of the petitioner, and reply, so far as it may seem necessary, to what has been presented on the part of the government. I say as briefly as I may, for I have been reminded of the advice that was given by Dr. Breckenridge to a class to whom he was lecturing on the subject of the efficacy of prayer, as compared with its length, when he said, "Young gentlemen, I beg you to remember that the Lord knows something."

I am going to argue this case upon the assumption that this Board knows something of the evidence which has been taken, and which they have been engaged in receiving and examining for a period of six months, and especially something of the laws of war and of the rules of military conduct. We, who represent General Porter, pretend to know very little of the latter subject, and confide entirely in the ample knowledge of the whole subject which this Board possesses.

At the outset, I wish to express our obligations to the learned Recorder for the ingenious and instructive argument which for the last two days he has been laying before the Board. It is exactly that which we could have wished should be done, namely, that the strongest argument that could possibly be made upon all the facts should be presented to the Board on behalf of the government before you proceed to decide upon the evidence. In my judgment, the best argument which could be made on behalf of the government, from the facts presented, has now been made.

More than that, we owe a considerable obligation to the Recorder for the diligence which he has manifested in searching for and procuring evidence supposed to be adverse to the cause of General Porter. A large part of it consists, in my view, of matter very strongly favorable to the cause of the petitioner, and matter which we never could have found by any search or power on our part. He has gone further than the mere gathering of facts. Every rumor, every suspicion; yes, I may say, every piece of scandal detrimental to the interest or conduct of General Porter, in relation to the events of the 27th and 29th of August, 1862, has now been presented before you. And if, as I hope, notwithstanding all this, your judgment shall arrive at a conclusion favorable to his cause, it must always be said that the search has been fully exhausted, and that everything that could possibly be brought into the balance against him has been thrown in.

As it seems to me, much of the closing argument of the Recorder has relieved us of a great deal of responsibility and anxiety and labor; because, upon the main question of this case, as I have always regarded it, namely, the conduct of General Porter on the afternoon of the 29th of August, he has now seen fit to present, for the first time, an entirely new view, something altogether different from all that has heretofore been claimed, and not only different, but absolutely antagonistic to it. If we may accept him as the authorized mouth-piece of the government, or of the prosecution, or of the adverse side which we are to resist or that is to resist us, so that we may take the propositions that he now

presents as final against us, we may dismiss from our minds all the claims that have heretofore been made in relation to the decisive events of that important day. For, when we come to discuss that part of the case, I think we shall be able to demonstrate to the Board that the claim of fault on the part of General Porter, as now presented, is not what General McDowell claimed, either on the former trial or upon this examination. It is not what General Pope claimed, either then or in any of the numerous and varied presentations of the case that he has since made. It not only is not the same, but is absolutely hostile and repugnant to all those. And, if what he now insists upon does not bear the test of examination, that branch of the case will be entirely ended.

We are entirely satisfied with the view that the Recorder has presented; but in what light it places those two great generals, who have, up to this time, stood in the attitude of accuser and of champion of the accuser, it is not for me to say. It does seem to me, however, that it has been a little ungrateful on the part of the learned Recorder, for he had a full view of the results of what he was presenting and of its necessary effects; ungrateful, for instance, to General McDowell, who, according to his statements made upon oath in this investigation, has aided the Recorder in this case, and composed, for his consideration and use in the preparation of it, somewhere from six to twenty written and printed papers. The general intimated at Governor's Island that he thought he was on trial. I did not then understand the true purport of the remark. But now it appears that he was on trial in the mind of the representative of the government, and that by him he has been tried and found wanting. He has thrown him overboard in this case, and turned him out of court with the utmost ignominy, as I think I shall demonstrate to you. And so of General Pope; one would have supposed that the representative of the government, now presenting this case for final consideration, would have found in some of the many, the almost countless publications of General Pope on this subject, hostile to General Porter, an inkling of the claim that he has now made. But he, too, is treated with contempt and scorn by this prosecution, as I shall show. Now, it will be my unexpected duty, which I shall perform with alacrity, to defend these generals; and I shall be glad that while defending General Porter I can defend General McDowell, also, from what seems to me to be the attempt at complete stultification, which is made against him by the learned Recorder. Whatever grievances we may have against that gentleman, however much we may have reason to complain of his attitude in the previous stages of this case, I do not think any one on our part has ever dared to suggest, or would be willing to intimate that he was guilty of the stupidity and ignorance which is inevitably fixed upon him, if you feel called upon to adopt the view of the learned Recorder, presented the day before yesterday for the first time in the whole history of this case. By what motive is he actuated? Is it to ascertain the truth? Does he believe now, as his argument necessarily concludes, that all the charges that were made on that branch of the case before the court-martial, and upon which General Porter was condemned, that all these serious charges of sixteen years ago were invalid? Does he desire to bring General McDowell into disrepute? Does he wish to convert this controversy into a third Bull Run for that distinguished general, as if two would not suffice? I shall, in its proper place, ask the careful attention of this Board to the view which he has set forth, because, as it impresses my mind, it stamps this whole prosecution with contempt, and demands for it the scorn of every intelligent and honest man.

Again, the learned Recorder said—an unnecessary straw thrown into the scale against General Porter—that he had personally changed his mind as to the petitioner's guilt or innocence; that, having come to this investigation with views favorable to General Porter, he, upon an examination of the case, had been compelled to change his mind. Well, we shall have to bear that. I do not think that it was necessary, in his official capacity, that he should seek to put that additional burden upon General Porter's back. Nor did it seem to me that the reasons that he gave for the change of his views were reasonable, or worthy of any consideration. You will recollect that he enumerated the causes for his change of mind. But as he has done this, it may not be improper for me to acknowledge also, a change of mind in regard to the case. For I must confess, almost with shame, that for more than fifteen years I was one of those heedless and unthinking millions who took it for granted that General Porter was guilty. Not guilty, if you please, of the atrocious crimes of which he was convicted, because I never knew the exact nature of these charges; but guilty of something heinous and derogatory to his character as a soldier. I had taken it for granted, as I believe the millions of the inhabitants of this country had, that a court-martial consisting of nine eminent generals sitting in judgment upon their peer, could not have found him guilty and put upon him the brand of infamy, which is conveyed by their sentence, unless he had really committed some fearful crime. When he came to ask me to act for him in a professional capacity, I was obliged to tell him so; and he said, with a manliness which I shall never forget, that he would not ask me to act for him unless upon an examination of the record, and upon the facts that he had to present, I was satisfied of his innocence; and further even than that, for he added, that if, after taking his case, I should find, as it proceeded and was developed, any reason to believe him guilty, I should be at liberty to abandon it. Well, I examined the record. I found that the case had not been half tried; that the trial had taken place in the midst of the frightful excitement of war, when party and sectional passions were at their utmost height, when the disasters in which the war had involved the country had saturated the minds of the people and of almost all the soldiers of the country with alarm and indignation. I found that there were circumstances most unfavorable to justice in the surroundings and in the composition of the court which tried him. I found that one-half of the main witnesses cognizant of the facts had not been accessible to him or to the court at the time of the trial. I found that the most able and learned jurists of the country, in examining the case, had pronounced that even upon the record as it stood, there was no evidence fairly, upon the acknowledged principles of justice, to sustain the conviction. A personal study of the record satisfied me of his innocence, and when I came to examine his new evidence, not only did it demonstrate that he was not guilty, but that for the very acts and omissions to act with which he was charged, he was entitled to the very highest merit and commendation. So it seemed to me to be not only a high professional service, but an urgent public duty to enter into his defense, and to stand by him as long as he needed support. I say a public duty, as well as a professional service, because, in my view, this is not General Porter's case alone; it is the case of the whole Army: it is the case of every honest soldier who marches under our flag! Yes, it is the case of all the people of this country, for blighting as was the stigma which was placed upon him, it rests upon the Army and the country, too. I think I shall show you that there never has been a soldier exposed to such shame and humiliation, and there never has been an army suffering from

such a brand as this; and if it is undeserved by him and by the Army, why, as the President has said, it is time that it was reviewed and removed.

The learned Recorder has further said that he did not regard the fact that General Porter had been for sixteen years besieging the executive department at Washington for relief as a circumstance entitled to any consideration. But I do. I think that is the first great convincing argument of innocence which presents itself upon the threshold of this case before you look into the evidence. Why, what could have borne him up during all these sixteen years? Could guilt have done it? Suppose him to have been guilty of the crimes with which he was charged, should we ever have heard of the case any more? Should we ever have heard of General Porter any more, except as bearing his shame to his grave as best he might? No; a guilty man would never ask for a re-examination of the charges, knowing only too well that if one-half of the proof demonstrated his guilt, all the knowledge that could be brought from all the world to bear upon the subject would only prove it blacker and deeper. Yet I suppose that General Porter, from the 21st of January, 1863, until this moment, has never had a single waking hour that has not been inspired with the prayer that he might not die until he should be able to demonstrate to his countrymen his innocence—should be able to clear his name from this infamous brand that has been put upon it, and hand it down to his children as pure and bright as he received it from ancestors of honor and renown. This conscience which has been implanted within us is a great and powerful engine for support or for destruction. It may make—Shakespeare says it does make—"cowards of us all." It may make the great and gallant general, who has sought and found a bubble reputation at the cannon's mouth, quail at the idea of coming before three of his brother soldiers simply to tell the truth. But when it takes the shape of what Virgil calls the "*mens sibi conscia recti*," the heart conscious of its own innocence, it can carry a man, as it has carried General Porter, through perils such as have never yet been found upon the battle-field, and through years of suffering and humiliation to which death itself, at any time, would have been a merciful release. So I submit mit to you that the fact that General Porter has been asserting his innocence, in the face of all the world, from the moment of his conviction until now, is at least entitled to be taken into consideration in passing upon the question of the guilty or innocent intent within the breast of the man, which, after all, constitutes the very gist of this inquiry.

Well, he has maintained this contest, and upon what ground has he asserted it?

The learned Recorder is pleased to say, upon the ground of newly-discovered evidence.

Why, not so entirely, if the Board please. It is on the ground that he was always innocent, that upon no facts that could ever be truly stated ought he to have been convicted. And then, upon the further fact that what he asserted upon his original trial, and what the court refused to believe, he could now demonstrate so clearly that any man who runs might read and understand, and must believe it.

Well, the learned Recorder says, why didn't he ask President Lincoln to open his case, if he had such confidence in it himself? and several questions of that sort have been asked by the learned Recorder, which imply a forgetfulness of facts, facts proved in the case on his own part. There has not been a President at the White House from the day of his sentence to this, before whom he has not laid his case; and as to President Lincoln, we expressly proved an application on the part of Governor Newell, representing the petitioner; and we have always believed that if

President Lincoln had not been taken away by the bullet of the assassin, we should have had justice at his hands. But—and I beg the attention of the court to this fact—urgently as he has presented his appeal, just as urgently has it been resisted from other quarters. It is not for us to inquire or to know who has had an interest to prevent the question of General Porter's guilt or innocence being inquired into, but somebody has done it. And I rather think that the opposition has come from more sources than one. One of them is apparent upon this record: General Pope, his original accuser, has always, except upon one occasion, the sincerity of which I do most truly doubt, been resisting the effort and inquiry, and has, down to this moment, been standing in the way of justice. I conceive that nothing but a consciousness of absolute innocence could have carried General Porter through to his present position in this case against such obstacles.

POWERS AND DUTIES OF THE BOARD.

Now, we have the first result of all these strenuous efforts upon his part, the order for the constitution of this Board. The learned Recorder, from motives that I cannot understand, and from a view of the case which he has not disclosed, has studiously undertaken to belittle the functions of this Board. Ah, he says, it is to be regretted that this Board has no judicial functions. Judicial functions! A dignified board of eminent soldiers, ordered by the President of the United States, and commanded to ascertain the truth of this controversy—for it is a controversy with sides, as it appears—and he a member of the Board, what object could tempt him to impute to it insignificance and a lack of judicial functions? I had always thought that the highest function of judicial bodies, the highest and the grandest, was the ascertainment of truth; and when it takes the shape of the ascertainment of the truth of a point of history, which involves the good name not only of a gallant soldier, but of a great army, and a great nation, human justice can attain to nothing higher. And so it did seem to me that this reflection upon the Board of which he is a constituent member was wholly uncalled for.

Again, he regrets that this Board has no power to summon witnesses, or, as he terms it, compel the attendance of witness. Well, who has been hurt by that? Who has not come that was wanted by us or by the Board? One man and one only. There is one big fish who has escaped from the meshes of this judicial net, the great general who stands behind this prosecution, holding up its arms. But is it for the learned Recorder, especially in view of the tender and confidential relations which seem to have existed between himself and General Pope, to regret that this Board has not had the power to drag him across the continent, and to place him a reluctant witness upon the stand, and have the truth drawn out of him as by the forceps of the dentist? Yet these are his reflections; these are his regrets, and I have no doubt that, as I think I shall show you, it is General Pope's regret, which the Recorder has uttered, that the suggestion originated from him, that this Board has not the power to compel the attendance of witnesses. And considering the defiant attitude in which that gentleman stands to this case, and to this Board, I think that the suggestion is cool, even for West Point, in the month of January.

I submit that this Board has the most ample powers for the discharge of the duty imposed upon it. For the one thing that we have missed, the personal presence of General Pope, I do think we shall be able to get along without. I do think we shall be able first to ascertain what General Pope's views are, and, second, to put them to a competent analy-

sis by comparison with the facts as they have been proved here, just as well without his presence as with it.

AUTHORITY FOR THE BOARD.

Now, if the Board please, I wish to read the application of General Porter, and the order organizing this Board, to show what its functions are.

To His Excellency RUTHERFORD B. HAYES,
President of the United States:

SIR: I most respectfully, but most urgently, renew my oft-repeated appeal to have you review my case. I ask it as a matter of long-delayed justice to myself. I renew it upon the ground heretofore stated, that public justice cannot be satisfied so long as my appeal remains unheard. My sentence is a continuing sentence, and made to follow my daily life. For this reason, if for no other, my case is ever within the reach of executive as well as legislative interference.

I beg to present copies of papers heretofore presented bearing upon my case, and trust that you will deem it a proper one for your prompt and favorable consideration. If I do not make it plain that I have been wronged, I alone am the sufferer. If I do make it plain that great injustice has been done me, then I am sure that you, and all others who love truth and justice, will be glad that the opportunity for my vindication has not been denied.

Very respectfully, yours,

FITZ-JOHN PORTER.

Then follows the order of the President organizing the Board:

In order that the President may be fully informed of the facts of the case of Fitz-John Porter, late major-general of volunteers, and be enabled to act advisedly upon his application for relief in said case, a Board is hereby convened by order of the President.

This is what it is to do:

To examine, in connection with the record of the trial by court-martial of Major-General Porter, such new evidence relating to the merits of said case as is now on file in the War Department, together with such other evidence as may be presented to said Board, and to report, with the reasons for their conclusion, what action, if any, in their opinion, justice requires should be taken on said application by the President.

One would think that there was an order from an unquestionable source of authority, which did constitute a judicial tribunal for one of the highest judicial purposes ever known to history.

Well, then, at the outset, questions arose how you were to proceed, and I have noticed a disposition on the part of the learned Recorder to hamper you by technical rules and restrictions; but we do not understand that there is any reason for putting fetters upon the action or power of this Board. What is it that you have to do—what is the object? Truth, is it not? Truth, and the whole truth, is the only object; and justice, pure justice, is the simple end of it.

The record of the court-martial is submitted to you first, but in connection with everything else in the nature of evidence which may be brought before you. "You are to fully inform the President of the facts of the case," so as to enable him to act advisedly on the application for relief, and to report your conclusion with your reasons. I think my learned friend, the Recorder, might have cudgeled his brains for a good many years before he could have framed an order, the scope of which would be more full and large, to enable the Board to attain the only object which this petitioner in asking, and, as I believe, the President in organizing the Board, has ever had, namely, complete and final justice.

Now, the nature of General Porter's claim, I wish it to be understood, is not for pardon but for justice only. He does not ask for pardon, as a condemned and guilty defendant, but he asserts now, as he has always asserted, his entire innocence of all guilt, and asks that that may be declared. Complete innocence, perfect, unconditional loyalty is what he

asserts for himself, and what we, upon the record now before you, assert for him.

THE PRESIDENT'S POWER.

And that raises a question, I suppose, of the power of the President in this matter of the constitution of this Board. In respect to that I have a suggestion to make. At one time, when General Porter was making one of these renewed appeals for executive interference in this case, influences, which, I suppose, were the same as have so long thwarted his application for justice, prevailed in procuring an act of Congress, which I will now read to you. It is to be found in the 15th Statutes, page 125, and is known as "An act declaratory of the law in regard to officers cashiered or dismissed from the Army by sentence of a general court-martial."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no officer of the Army of the United States who has been, or shall hereafter be, cashiered or dismissed from the service by the sentence of a general court-martial, formally approved by the proper reviewing authority, shall ever be restored to the military service, except by a reappointment, confirmed by the Senate of the United States.

A law which appears to me to be altogether just and wise, and as you see, it bears directly on the question, if ever there was a question, of the ability of the President in such a case to restore General Porter, or any other officer in a like situation, however innocent, to the military service, unless the reappointment shall be confirmed by the Senate of the United States. Well, now, under that branch of this order, which requires you to form an opinion and to report what the cause of justice requires of the President, there may be occasion for your action; there will be, as it seems to me, in any event. If, as the result of all our labors, you find the court-martial correct on all the facts now known; if you find on all the evidence that has been brought before you that General Porter was guilty of the charges, you will so report, and that justice requires no action of the President. I think that more than that would come within your province and your duty; if you find that after all his lamentations he was guilty of all these infamous charges, you should not only report your conclusion, but that the punishment that was inflicted on him was altogether inadequate to the crime that he had committed. It would be only a just rebuke to the petitioner for vexing the ears of the country, and of the President, and of this Board, and of the students of history with his unfounded appeals. I say grossly inadequate to the crime committed, because, as it does seem to me, there never was so foul a crime imputed to a soldier in historical times as has been by this record placed upon the petitioner. I desire to call the attention of the Board to this: it is not a mere case of disobedience of orders; there have been ample cases of disobedience of orders before; it is not a case of treason, for which you can invent a motive, a provocation, or an apology; not at all. There have been other traitors. The place where we now sit was a witness to a conspicuous one; but Arnold's treason was merely an intent to hand over one of the military posts of the country to its enemies. The case of General Charles Lee has been cited by the Recorder, occurring at Monmouth, in the Revolutionary war, but that was of trifling malignity as compared with this, which was imputed to General Porter. Let me read one of these charges of which he was found guilty; the third specification of the second charge:

In that the said Fitz-John Porter, being with his army corps near the field of battle of Manassas, on the 29th August, 1862, while a severe action was being fought by the troops of Major-General Pope's command, and being in the belief that the troops

of the said General Pope were sustaining defeat and retiring from the field, did shamefully fail to go to the aid of the said troops and general, and did shamefully retreat away and fall back with his army to the Manassas Junction, and leave to the disasters of a presumed defeat the said army; and did fail, by any attempt to attack the enemy, to aid in averting the misfortunes of a disaster that would have endangered the safety of the capital of the country.

Now, I challenge the Recorder, or anybody else, to find in all history a crime like that. I do not believe it is possible for any such crime to be found related. The annals of history may be searched in vain for the counterpart of this. That he willfully, consciously, and merely to spite his commander—for that is the view in which it was presented by the learned Judge-Advocate and by the Recorder here—merely to spite his commander, did hold aloof, with his brave army corps, from the battle in which the rest of the army were engaged, with intent to sacrifice the rest of the army and bring shame upon its commander and ruin upon the country, and perhaps to hand over its capital and its very existence to its rebel adversaries. There is an instance, not in history, but in the legendary days of Rome—and in those legends we have ideal history embodied—which shows the judgment, I think, of mankind as to the proper punishment to be inflicted for such a crime. It is related that in the days of Tullus Hostilius a conquered king of the Albans, Mettius Fufetius by name, whom he had placed as corps commander in charge of one of the armies of Rome, went out with him to the contest with the Veientians, and the legend states that he stood aloof while the armies were engaged, in order that the army of Rome might be vanquished. Now you have observed that that had not the elements of crime here imputed; it was not the case of a man who had been a loyal subject and a general of his own army, but it was that of a conquered king who had been trusted with a command. What did Tullus do with him?

So when the Romans had won the battle, Tullus called the Albans together as if he were going to make a speech to them, and they came to hear him, as was the custom, without their arms; and the Roman soldiers gathered around them, and they could neither fight nor escape. Then Tullus took Mettius and bound him between two chariots, and drove the chariots different ways and tore him asunder.

And in my judgment no less than that would have been an adequate punishment of such atrocious crimes as were imputed to General Porter.

DISPARITY BETWEEN OFFENSE AND PUNISHMENT.

Now, we call the observation of the Board to the startling difference between the guilt that was imputed and the punishment that was imposed in this case. As one of the secrets of history it will probably never be explained how it could be that the court-martial regarded him as guilty of such a crime and yet merely dismissed him from service, and declared him to be forever disqualified from holding any office of honor or profit under the United States. The sentence itself confesses the injustice of the conviction. If it was for the punishment of the offender, it was wholly, as everybody sees, inadequate; but if there was an indirect purpose in that prosecution, if he was a sacrifice to the dicipline of other men, of other generals, and other soldiers, that might explain a thing which otherwise is so mysterious. And perhaps the learned Recorder will not quarrel with the authority which I now cite on that subject, which is the reply of Judge-Advocate General Holt to the answer of Mr. Reverdy Johnson, from which he has cited and to which he has so strongly objected:

The wonder of military men, who understand the atrocity of Porter's offense in all its bearings, is, not that he was condemned, but that his life was spared. The court-martial might well have sentenced him to death, and they forbore to do so, in all prob-

ability, only because they felt that, as a walking, blasted monument of treachery to his country's flag, he would be a warning to others, far more effective than any voice which could issue from the depths of his dishonored but perhaps forgotten grave.

Does not the Judge-Advocate-General here reveal the true inwardness of the action of the court-martial?

If Porter was tried and sentenced and punished for the supposed crimes or apprehended crimes of other men, we can understand it. If he was sacrificed to the discipline of the Army of which he had formed a glorious part, even that, like death and wounds, is something which a patriot soldier can bear. It may be that we shall have occasion to examine that very question a little further, because, as it does seem to us, that must be the explanation of the otherwise extraordinary judgment of the court-martial. This case has often called up to public recollection and comment the case of Admiral Byng, who, in the middle of the last century, was court-martialed for a supposed failure on his part to do his utmost when proceeding with a British fleet for the relief of the island of Minorca, that was besieged by the French. He was not guilty. He, too, was a brave and gallant soldier, faithful to his country's flag, but he was chargeable with an error of judgment in not pressing the French fleet with all his power, as his brother soldiers assembled in court-martial felt that he might and should have done. There is, however, this remarkable difference between Byng's case and Porter's case: The court that declared the former innocent, condemned him to be shot, and he was shot—shot, in obedience to a supposed governmental necessity, to appease the howlings of the British mob, for the court expressly declared he had been guilty of no cowardice, of no treachery, of no evil intent. Yet, being instructed that the imperative nature of the article of war bearing upon the subject, if they found that he did not do his utmost, permittted no sentence short of death, they sentenced him; and, the king and the ministry not being brave enough to stand up against the brutal demands of the British public, he was led out and shot like a traitor. The government, in spite of the eloquent appeals of William Pitt, deliberately sacrificed him to the mob, who had burned his effigy in every town in England, and had placarded all the streets of London with the startling threat, "Hang Byng, or look out for your king!" Well, as it seems to me, to a brave soldier, Byng's fate was a light punishment compared to these sixteen years of imputed infamy and shameful humiliation which Porter has borne, and so Byng thought, for when he heard of the judgment of the court, he said, "What! have they put a slur upon me?" apprehending that they had pronounced him a coward. But when told that it was not so, that they had acquitted him of cowardice, a smile wreathed his features, and he marched to his fate as bravely as he had ever trodden upon the deck of his frigate. But this court which tried General Porter found him guilty of all these damnable atrocities to which I have called your attention, and yet failed to impose any punishment at all in proportion to the magnitude of the offense.

And now, suppose, on the other hand, after giving all weight to the judgment of the court-martial and its proceedings, you find General Porter innocent. You must proceed further under the instructions of the order organizing the Board and requiring it to report; and as a necessary part of your investigation, and especially as bearing upon the question of the weight which you are to give to the proceedings of the court-martial, the important question must be answered, how, being innocent, so far as the record discloses, he came to be convicted. Justice to Porter, justice to the country, justice to the action of the court will require at least a recognition of that question. If there were circumstances surrounding the court, or in its composition, or in the neces-

sary haste imposed on its action by the exigencies of the service, or in the imperfect facts before them, or in the rules of evidence applied by them, unfavorable to justice, it is important to know it—for you, for the President, for the country to know it—for the purpose of determining how much you ought to regard yourselves as constrained, as guided by their conclusions. And so, as to the action of President Lincoln, entitled in the eye of every American, in the judgment of history, to the very first merit as an authority.

CIRCUMSTANCES UNDER WHICH PORTER WAS TRIED BEFORE.

I ask you, first, to consider briefly the circumstances under which the court-martial convened, with a view to the question whether they were favorable to a just trial of the cause. If they were, it lends a support to the judgment of that tribunal which it will require all the more complete demonstration of truth on the part of General Porter now to overcome. Well, we knew that it did not need any evidence to bring before you the circumstances under which the court assembled; and I submit to you that they were most unfavorable to the consideration of such a case or to the administration of justice upon the particular questions raised. This brings into view the whole previous history of the war in Virginia, but which need not occupy the attention of this Board for more than a few minutes.

The breaking out of the war of the rebellion, as everybody knows, found this government and country in a state of absolute destitution as to preparation for war. The first efforts and struggles on the part of the government to sustain itself were of the most painful character; and particularly is this true of the history of the war in Virginia, where these transactions occurred on the 29th of August, 1862. This has a bearing upon the circumstances that surrounded this court-martial. Who has forgotten the mortification and humiliation in which the first campaign in Virginia resulted? The whole campaign, if it may be called a campaign, in 1861, exposed the government and the country to chagrin, remorse, and mortification. While the press and the people were howling "On to Richmond" with ten million voices, our arms in Virginia seemed almost paralyzed. The story of the first Bull Run and of the Federal Army waiting before the quaker guns of Manassas, is a type and a picture of the whole history of that year. Then the government, and its gallant generals who had rallied to its support, devoted themselves to the great work of preparation; the Army of the Potomac was organized, and the campaign of that army for 1862, for the next year, was set on foot. It was supposed to be the best organized and the greatest army that ever, on this continent, sallied forth, and all the hopes and all the boastful promises and expectations of the government and of the people were staked upon it. But it is not too much to say that its career was another history of disappointment and mortification. Who can ever forget the doleful stories that came from the swamps of the Chickahominy, and the palsy that seemed to rest upon the country when the final step of a retreat to the James River was taken? There were redeeming features in the view of the government of the distressing history of that period. There were two bright days: there was the day at Gaines' Mill, and that other day at Malvern Hill, when it is not too much to say that the services of the petitioner were the most brilliant of all the great and brave achievements of its record.

But that army got back to James River, and in the judgment of the government and of the country, nothing useful had yet been accomplished.

Well, our hopes never failed us, at any rate, and our courage never failed us, and a new plan was resolved upon.

An Army of Virginia was organized; General Halleck was called from the West and placed in command as General-in-Chief, and General Pope, for whom the best wishes and best promises were held forth, was called to organize and command this Army of Virginia; and as the next step, the Army of the Potomac was recalled to unite with the Army of Virginia in the protection of Washington, and in new projects for the conquest of the rebel Confederacy. I need not repeat to you the history of the sixty days' existence of the Army of Virginia. It was another story of disappointment and chagrin; more mortifying, more depressing than all that had gone before; there was fighting enough, there was slaughter enough, but in the public judgment there was no result. And now we come, as I suppose, to the most distressing period in the whole history of our contest with the Confederacy. Gold went up and the hearts of men went down, and shame and anger possessed the hearts alike of the people and the government. Always, in times of great distress and disaster, I think there is no exception in history, it is the natural impulse of the great masses of a nation, the irresistible impulse of the popular heart, to look out for somebody to blame; to put it upon the shoulders of somebody, for somebody must be to blame. Well, what was the key-note of this last imputed failure? I pass no judgment. I can form none in such a matter, but I am looking at the public judgment that surrounded that court.

What was the key-note of the failure? Why, it was that General Jackson and his famous rebel army, after its capture had been heralded as an absolute certainty, was allowed to escape. That was what happened, that was the crisis, that was the culminating point of national distress and mortification, and everybody inquired who was to blame.

Do you not know, does not everybody know that there are times, and that such are the times when accusation and conviction are equivalent and interchangeable terms? Well, there was another wheel within the wheel of the national distress; there were suspicions, there were charges that hung on every lip, that were believed by every other man you met in those days, that were evidently believed by the government, that there was treachery, that there was disloyalty in the Army of the Potomac, and among the generals of the Army of the Potomac, and that some proceedings were necessary. Some example was necessary that should enforce discipline and cut out the roots of any such supposed disloyalty or treachery. For myself, I believe that the whole charge was without foundation; for myself, I believe that they were all loyal, and that under any commander, as their achievements before and afterward demonstrated, they were ever willing to fight their best. But, nevertheless, this charge was made, was taken up and became a public outcry, and the necessity for something to be done that should stop or should punish the supposed offense, was in every newspaper and on every tongue. The thirst of a great nation for vengeance, for a victim, will always be satiated. Just then, General Porter was accused; the government believed him guilty; General Pope, the commanding general of the army, asserted his guilt, and General McDowell, who was next in command, supported the charge. And who, in such times, could resist such a charge?

Who does not know that in times like those the mere accusation was, from the inherent infirmities of human nature itself, almost the same thing as a conviction? The Recorder says that we bring charges against the court-martial. I disavow it. I unite with him in all his encomiums

upon the distinguished gentlemen who composed that court. I question not their conscientious performance of duty in that critical time. But they were only men, and human judgment is finite. The learned Recorder puts it most admirably, and if I had a copy of his opening address I should be under obligations to him for expressing the very idea which I wish to present in regard to that court.

It is too true that human judgment is but finite, and that there are many times and occasions when an innocent man is necessarily convicted. History is full of instances which demonstrate exactly what I mean. I mean the impossibility of preserving an unbiased judicial mind in the face of an overwhelming pressure of popular impulse or popular opinion. The greatest judges that ever sat upon the bench, the wisest and most trained minds who had made law and the investigation of disputed cases their sole province and study through a score or more of years, have been exposed to the same subtle, insidious, irresistible influence of public feeling upon them; and it is not in the least derogatory to their character as judges, but merely imputes to them that they are men. Take, for instance, Queen Caroline's case, a case which enlisted the public feeling of every man and every woman in England upon one side or the other. It is a regretted but a recognized fact that upon the questions of law raised by the facts in that case, and presented to the law lords, embracing the greatest and wisest of the judicial minds of England, they always voted upon them, not according to the law and the facts as afterwards considered, when reviewed by judicial minds, but invariably according to the dictates of that party division of the people of England with which, by tradition and by the experience of their lives, they happened to sympathize. Nobody has ever questioned the integrity of Lord Eldon or Lord Erskine. So it was in O'Connell's case, when England was agitated throughout every hamlet and household. There are times when the administration of justice in the face of this subtle, far-reaching, irresistible popular power becomes wholly impossible. And so I say that this court-martial sat in times and under circumstances which were not favorable to the administration of justice; and if any unfavorable reflections have ever been cast upon those judges or their action, I, for one, on the part of the petitioner and of my associates, disavow them all. We impute to them nothing but honest performance of duty.

THE COMPOSITION OF THE COURT-MARTIAL.

In the next place, was there anything in the composition of the court-martial that was not favorable to justice? In that respect, my learned friend, the Recorder, has seen fit to comment upon the manner in which the court-martial was organized. I think, myself, that there was an error committed, but one with which you have not to deal, and one for which the court was not at all to blame. Let me read to you the law to which I refer, the act of Congress of May 29, 1830, which was supplementary to an act for the establishment of rules and regulations for the government of the armies of the United States, passed April 19, 1806.

It enacted that—

> Whenever a general officer commanding an army shall be *accuser* or *prosecutor* of any officer in the Army of the United States, under his command, the general court-martial for the trial of such officer shall be appointed by the President of the United States.

In our present view of the evidence, as it stands recorded before this Board, General Porter was brought to trial by reason of the accusation and prosecution presented against him by the general commanding the

Army of which he was a part. If the facts had been presented to the President or to the court-martial at the outset of its sessions, as they have been presented to you, that court, at any rate, would never have proceeded with the trial. But General Pope saw fit to go before that Board and say that he was not the author of the charges, that he had nothing to do with them, and so to leave the court under the impression that the real accuser and prosecutor was General Roberts, his inspector-general, in whose name they were presented.

Now, as to the object of this law, we differ from the learned Recorder in his construction of it. We suppose that when an act says that when a general is to be tried upon charges presented by his superior general, commanding the army of which he is a part, that the court-martial shall be constituted by the President, and not by the commanding general—General Halleck in this case—we suppose it is so enacted out of consideration for the dignity of the offense and of the offender—that if a general officer is to be brought to trial upon charges involving his fame and his life emanating from such a source, no less dignified a person than the President shall appoint the court; no less impartial a tribunal than one created by him—raised, as far as human foresight can raise it, above army quarrels and army rivalries—shall be the judges who are to try him. Now, if that is the proper view of the law, suppose that General Pope had gone before the Board, and instead of swearing as he then did, that he had nothing to do with the charges, had sworn as he afterwards stated in his report to the Committee on the Conduct of the War in 1865, which I have in my hand, for there he not only boasted of having been the accuser, but confessed that he had demanded his reward for carrying the prosecution successfully through.

He said:

I considered it a duty I owed to the country to bring Fitz-John Porter to justice, lest at another time, and with greater opportunities, he might do that which would be still more disastrous. With his conviction and punishment ended all official connection I have since had with anything that related to the operations I conducted in Virginia.—(Supplement to Report of Committee on the Conduct of the War, part 2, p. 190.)

Now, let me read you a previous sentence from the same report, to show his boast:

In the last days of January, 1863, *when the trial of Fitz-John Porter had closed, and when his guilt had been established, I intimated to the President that it seemed a proper time then for some public acknowledgment of my service in Virginia from him.*—(*Ibid.* p. 190.)

Suppose, now, that the President of the United States, or General Halleck, or the court-martial had known those facts as there stated by General Pope, can anything be more certain than that a court-martial, at any rate selected not by the President, but by General Halleck, would never have proceeded to the trial of the cause?

The next circumstance in regard to the composition of the court that I have to suggest, without imputing the least reflection or suggesting anything in the least derogatory to the members of that court, except that they are but men, is this—and is in the direct line of the last objection that I have made—because I do not believe that the President of the United States would ever have committed that mistake. What was it? What was the cardinal thing that General Porter was accused of? What was it that the rage of the country was to be appeased about? Why, it was letting Jackson escape, was it not—Jackson with his army, after the "bagging of the whole crowd" had been most felicitously and publicly proclaimed? Now, from the facts that have been spread and confessed before this Board, we know that Jackson's escape was accomplished the day before that upon which General

Porter is charged with dereliction. It was not on the 29th of August that General Jackson effected his escape. It was on the 28th, because then, as was supposed, they had him in a trap from which he could not escape, and General Ricketts, who constituted one division of General McDowell's corps, was stationed at Thoroughfare Gap, between Jackson and Longstreet, and General King was marching down the turnpike to Centreville, behind Jackson, so that if they had remained there, as they were ordered at all hazards to do, there could have been no possible help or relief for Jackson. But they left those positions, where it is due to General Pope to say, especially as to General King, that he was ordered at all hazards to remain, and, as was stated by General McDowell, and as everybody knows, and as the Recorder will not question, the door of the trap that held Jackson was thereby left open, and nobody remained to guard it. Not a regiment, not a soldier of our forces, intervened any longer between Longstreet and Jackson. Well, one would have supposed, who knows anything of what are the necessary attributes of a judicial mind, that the very last thing which it would occur to the power constituting the court-martial to do would have been to place General Ricketts and General King upon the court to try the offender—absolutely upright men, perfect men, as I suppose, but how could they sit as judges? How could they bring to bear the judicial element and the unbiased mind? They might themselves be tried for letting Jackson escape, and they to sit in judgment upon another man to be tried for that offense! What we say is this: That judicial impartiality under those circumstances cannot be asked of men. This law that I read was a wise one. I do not believe that the President of the United States, if he had had the organization of the court, would have organized it in the manner in which it was constituted. I do not believe that General Halleck, who did organize the court-martial, knew the fact at all. What a position in which to place those generals! I have spoken of the historical and traditional liability of the great and trained judges of courts of law to bias, to the difficulty of sustaining a judicial mind, in times of popular rage or excitement; but how much greater is the exposure of generals summoned hastily from the field for the discharge, perhaps for the only time in their lives, of the great functions of judges? Well, why was this done? The order constituting the court-martial explains it, and it is certainly a source of the utmost regret that the exigencies of the public service did require any such selection, for the order organizing the court-martial says positively that it was necessary, and that there was nobody who could possibly be spared to sit upon that court except those nine generals who did compose the court. I want to read the exact words of the order:

> No other officers than those named can be assembled, without manifest injury to the public service.

Was not that a lamentable thing, that two of the judges were thus related to the subjects that were to be tried? I doubt not that they did their best; I doubt not that they tried to be judges, but how could they be? Human nature will not stand everything, and however great they may have been as generals, or wise as men, I do not believe they could stand that. Nay, more, General King, to whose withdrawal from the rear of Jackson on the 28th, contrary to orders, is now imputed by everybody the escape of Jackson, not only sat as a judge, but had to be a witness. The exigencies of the public service not only compelled him to sit in the impossible attitude of a judge, but compelled him to take the stand and establish the truth as a witness adverse to one of the princi-

pal aides and witnesses on the part of General Porter. Is it not asking a little too much of our poor human nature to put a man in that position? Who knows but that it was the votes of Generals King and Ricketts—who knows but that it was General King's vote alone, that turned the scales of justice against General Porter? Nobody will ever know, except the members of that court. But why do I cite all this? Because the Recorder said that the judgment of that court-martial was right, and must be accepted by you. Independent of its being right, I think we see now that it was impossible for those nine men, all of them, to act as judges. That could not be. They might sit there and record their votes, but it was impossible for them all—it was impossible for two out of the nine—in the nature of things, according to the laws of the human mind, to be judges.

Another thing, among the many circumstances unfavorable to the administration of justice by that court-martial: Was there any unnecessary haste? The Recorder says that the record shows that it took a great many days to get in the evidence. But was there any unnecessary haste in their judicial proceedings, which were required to be deliberate and slow—considering all things—looking before and after? I will read to you the order that was served upon the court upon the morning of January 6, 1863, five days before the sentence was pronounced. Before I do that, let me say that even now, after we have had the benefit of a second trial, it would be regarded as rather summary if you should receive orders from the War Department to hurry back to your respective commands as quickly as possible, and to close this case without regard to hours, because the public service required it, and that you should instantly, upon the closing of the argument, take a vote. It might be necessary, owing to the exigencies of the public service, but it would not be judicial. Now I read this order from Secretary Stanton to this court-martial:

WAR DEPARTMENT,
Washington City, D. C., January 5, 1863.

GENERAL: The state of the service imperatively demands that the proceedings in the court over which you are now presiding, having been pending more than four weeks, should be brought to a close without any unnecessary delay. You are therefore directed to sit, without regard to hours, and close your proceedings as speedily as may be consistent with justice to the public service.

Yours, truly,

EDWIN M. STANTON,
Secretary of War.

Major-General HUNTER,
President, &c., &c.

It was not, you will observe, justice to the accused, but justice to the public service, that the Secretary appealed to as the final motive for a hasty decision of the case.

That was served upon the court-martial on the 6th of January. Then the prosecution brought up their rear guard of witnesses, and the case was almost instantly closed that day. There were given to the petitioner three days to prepare his defense, and then what happened? Why, these generals, although they were judges, were generals first, last, and always. How could they shut their eyes to such an imperative order as that from the great War Secretary, who was in that day the master of the fortunes of the whole Army? The country was in danger, its capital was at stake; it was more important to the public service that they should get back to their commands than that they should stop to deliberate upon the evidence upon which they had to pass. Now what took place? You can form some notion of how this imperative letter operated, judging by your own proceedings here. The Board met

at half past ten the morning of the 10th of January. There was an argument presented on the part of General Porter, called the defense of the accused, which, read with even the speed of the rapid tongue of our learned Recorder, could not have been finished much before the shades of afternoon were falling, for it occupies forty closely printed pages of this record. I do not state it as a fact, because it is not in the record, but I have been informed that it did actually occupy four hours and a half, or until half past two in the afternoon. At six o'clock that court-martial had adjourned, and General Porter was already condemned and sentenced, because the exigencies of the public service demanded it; that each one of these generals should go post haste to his command. Was that a condition of things favorable to the administration of justice? I should think that even you, after you know, as you now must know, all about the case, would deem it necessary to deliberate after the arguments were concluded, and to compare the evidence with the arguments to see whether on either side they were specious and fallacious or sound and based upon the truth. You would not say, "Why, I must be off to Saint Paul by the morning train," and "I must be off to Fortress Monroe to-night," and "I must return to my neglected cadets." But you would say, "Let us look into this thing; there is a man's life at stake; the fame of an officer of the Army is involved." You would require to deliberate; and if you did receive such an order, which would be impossible in times of peace, you would remonstrate—you would refuse to decide the case without a chance for deliberation.

So it does seem to me that there are circumstances surrounding the history of that court-martial which make it only fair for us to say—and even the learned Recorder will not term it libelous—that it was asking more than human judgment, and more than human nature was master of, for them to pass judicially upon the case.

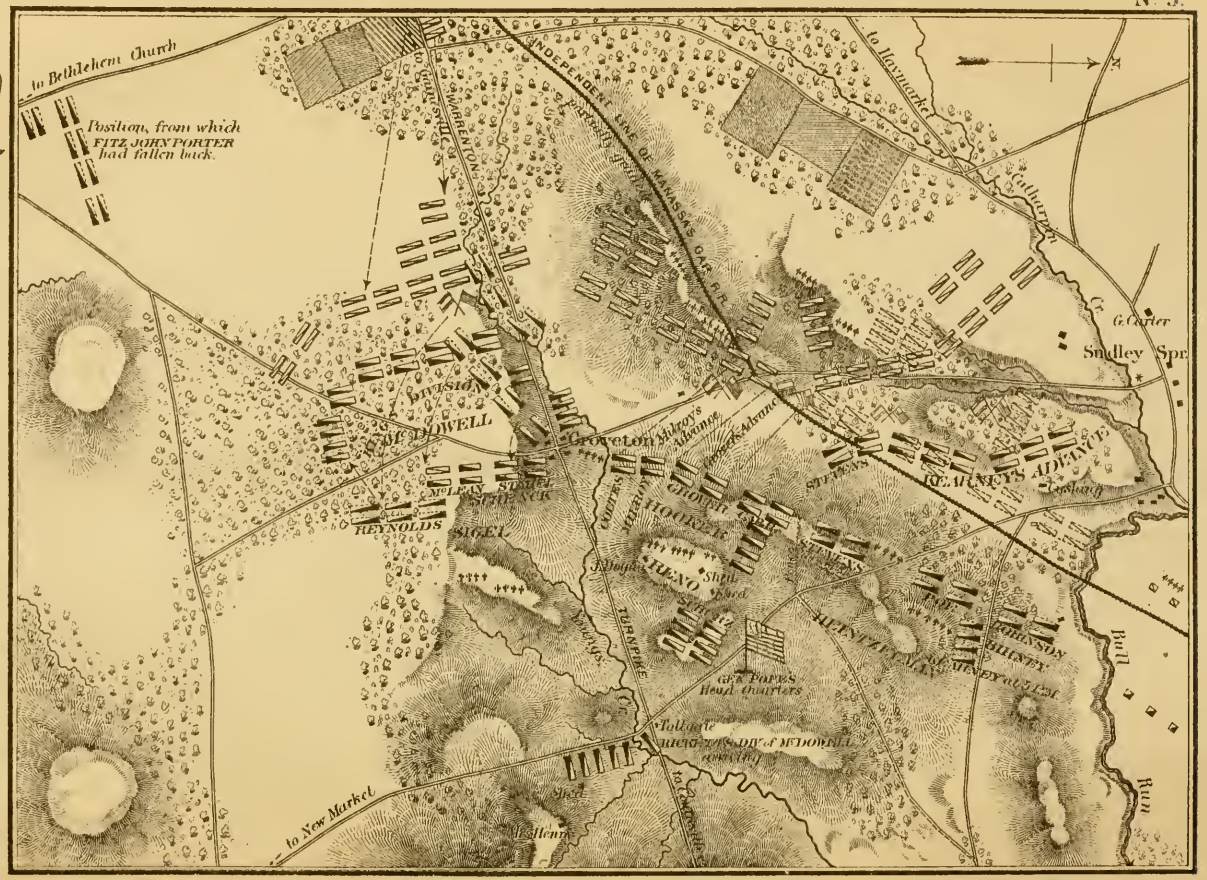
Next, as to the state of facts before them. Do you believe that the court-martial knew anything to speak of about the real facts of the case? What does a soldier, when he is looking for the movements of troops, first ask for? Is it not for a map of the country? Did they have a map? Yes, they had a map, and only one map. Well, was it a map? For there are maps and maps, as the Recorder knows. It was in the form of a map, but it was all wrong. You could not tell anything about the country from it. I do not think that General Pope and General McDowell and the other generals are so much to be blamed, as they sometimes have been, for the movements of that campaign; because this map, the same which was produced before the court-martial, was the only one they had to study, and they did not know anything about the country independent of the map. Now, what is the fact about this map? General Reynolds has said that it was all wrong. General Warren, who has made a special study of the subject, because he has been sent down by the War Department, detailed for the special purpose of preparing it, has given a correct map of the same region to this Board. I read from General Warren's evidence, at page 26 of the new record:

> That map is so erroneous that a proper answer cannot be given to the question. I cannot recognize these roads or places, or any of the streams, as corresponding to the places as they are on the map I have made, now before us.

So I think that their pole star was wrong; it was several degrees out of the way; and many a mariner might easily make shipwreck if the north star were to get dislocated and removed many degrees, or even a few degrees, from its place in the heavens. Well, did they know the great main facts of the case? Did they know that Longstreet's army had arrived on the scene of action, not whether they were in front or

BATTLEFIELD OF MANASSAS, VA. CLOSE OF THE ACTION AUGUST 29TH 1862.

No 5.



Report of Maj. Gen. John Pope to the Committee on the Conduct of the War.

A—10

Porter was
with within
a mile of
this

behind the Gibbon's woods—but did the court-martial know that they were anywhere there? Not at all. It was told them, but obviously they did not believe it. You have heard from Mr. Bullitt a discussion of the Judge-Advocate's reasons, which are to be taken as the reasons of the court and the President, and it is perfectly obvious that they utterly disbelieved and ignored the great and the leading fact in the case as it is now known. Again, did they know the real location of General Porter, with respect to Jackson's right wing, when he was expected to fall upon and consume it? Not at all. They had not the least conception of the relative positions.

Now, maps are to form an important part of my argument. I want to call the attention of the Board at this moment to one or two. There is a map which has been produced here as indicative of what was understood by the court-martial, because it was so understood by the principal witnesses who testified against General Porter as to the position from which he was supposed to have fallen back at the close of the action of August 29, 1862. It is one of those maps prepared by Lieutenant-Colonel Smith, and is a very important item in this case, because, when I come to ask you to look at the map which was before the court-martial, you will observe that the same error of fact was before that court as there is in this map in regard to the position of General Porter's force. Here it is described as the position from which Fitz-John Porter had fallen back. (See Map No. 5, from 'General Pope's Report to the Committee on the Conduct of the War, Map A in appendix.)

Now, I ask the Board to look, in the same connection, at the Army map, which has been every day, until now, before the Board, and which I present as part of my argument, and shall ask to have it incorporated—to look at the errors of position committed before the court-martial, and which the court-martial itself has committed in respect to the location of the troops—I mean, of Porter's force and of the respective forces of Jackson and of Pope on the 29th. For that purpose I have here taken one of General Warren's maps (Map No. 3), the topography of which and the locations of the roads and streams upon which are all correct, and have applied upon it, according to the evidence and according to the original record, the location of the troops, as they were believed, upon the court-martial, to be. I think it will be found not without instruction, even to the Board. Here is the junction of the Manassas and Sudley road, at which General Porter is placed. Here [M 3] is where Morell placed himself, and Porter's corps deployed for a forward movement. There [M 3 or 8] is where the witnesses for the government (so called), Pope and McDowell and Roberts and Smith, place General Porter. Here are the positions in which, upon the evidence before that court, the rebel army, extending to the Centreville pike, until the latter part of the day, and then supposed to extend down here [M 2], across the pike, were placed. Now, as General Reynolds says, it was only two miles, in a direct line, from this position of Porter's here [M 3] over to his own position. [These two maps, viz, the Army map and Warren's map, with the same positions projected, will be found in appendix, Maps B and C.] As the Court will observe, there was nothing to prevent, in that view, as there presented on the map before the court-martial, a flank and rear attack by Porter upon the unsuspecting right wing of the rebel army, and that was the supposition of facts upon which he was tried and convicted. Falsely placed immediately upon the right wing, and a little in the rear of the right wing, of Jackson's army, with no rebel force between, and nothing in the ground between to prevent him, he was found guilty of lying idle on his arms all day, and keeping

out of the fight, in which, upon that showing, he might have borne an effective part. All that, on this trial, has been taken back. On this trial, the witness Smith, who placed him there by a spy-glass; and the witness McDowell, who placed him there by mistake, both admit that they had put him, at least, a mile in advance of where he actually was. It has been demonstrated, as I suppose, that the right wing of Jackson's army, which he was expected to attack, was here at the Warrenton turnpike, and that the Confederate forces, under Longstreet (25,000 strong), whose presence was proved beyond dispute, but ignored by the court-martial, extended down even beyond the railroad, and the Manassas and Gainesville road, far in front of Porter—I mean, over on the other side of Dawkins' Branch—and occupying an impregnable position between his little band and the right wing of Jackson, which he was expected to attack.

Now, I desire that this other map (No. 4) of the true position, at noon of the 29th, as now proved, may be recorded as a part of my argument. I do not, of course, present it as evidence, but as argument. I believe the projection of the positions upon this map have all been honestly, conscientiously, and faithfully made; and I shall be glad if the Recorder has any objection or criticism to make that he may be permitted to make it. We do not, in this investigation, desire in the least to mislead the Board, or to vary from the record of the trial, and I earnestly hope that if the Recorder, upon that map, or upon any of the other maps that I present as a part of my argument, can find any fault, whether it is founded on fact or not, that he be permitted to find it. For, if these maps do not lie, they demonstrate that while Porter was convicted by the court-martial of not attacking the right wing of Jackson's army while that army was contending at equal odds with Pope, he was really punished for not throwing his army corps of ten thousand men in a hopeless assault upon Longstreet's twenty-five thousand, whose presence, known to him, was unsuspected by General Pope and the court-martial, and which put him as far out of the reach of Jackson's right wing as if an ocean had rolled between them. (The map last referred to showing the positions as claimed by the petitioner, will be found in Appendix as map D.)

Well, what else was there about that court? Why, one-half of the witnesses could not be had. Some few witnesses from—shall I be permitted to call it the "Federal" Army, in spite of the Recorder's protest against that word?—were there; but all the Confederate soldiers and generals and other officers were, from the "exigencies of the public service," compelled to be absent, and the court was compelled to get along without them. It does not give a very impressive weight to the judgment of a court that the doors of the court were locked, so that one-half of the witnesses could not get in. That would not pass muster, even in a case of "petty larceny," to the like of which the Recorder is sometimes disposed to degrade this examination. I think that any poor wretch who had been convicted and sent to the county jail for thirty days for thieving, would be entitled to a new trial at once if it turned out that one-half his witnesses could not get in, because the doors of the court-room were barred against popular entrance. That is a very important matter indeed in considering the weight to be given to the action of the court.

I observe that my learned friend, the Recorder, has been inclined to draw a line between rebel witnesses and Union witnesses, to the disadvantage of the former. But he cannot raise any such issue with us, nor, as I believe, with this Board. I know nothing in regard to the gentlemen who have been called on our part from the Confederate army, Gen-

erals Longstreet, Wilcox, Early, and Robertson, Colonel Marshall, and many others, except what is known by everybody as historical about them. They were mostly soldiers educated at this institution; and, with rare exceptions, I believe the graduates of West Point are taught, and do learn, so thoroughly that they carry it with them through all their lives, to speak the truth; whatever else they learn or fail to learn, they do learn that. It is a pretty good certificate from this institution that anybody who does not tell the truth is very apt to slip out by the back door of the Military Academy before the day of graduation comes around. Well, I believe they were gentlemen. I believe that they were possessed of just as perfect personal integrity as though they had not been rebels.

They were just as good witnesses as the Federal witnesses and no better, entitled to equal credit, and to be measured by the same standard. Their evidence all around is to be weighed in the balance, and all the witnesses alike are not to be counted, but weighed. If they were to be counted we should have got out of court a good while ago; for after we had closed our case with the examination of forty or fifty witnesses, the Recorder summoned in a hundred. So, pray, don't count the witnesses, but weigh them.

Again, the court-martial was led to believe, and it disposed of the case upon the theory, that there was a retreat by General Porter. On this vital point it has now been demonstrated, to the satisfaction of the most skeptical, as already shown to you by the arguments of my associates, that the whole pretense of any retreat at all was without the least foundation in fact. But once more, to dwell a little longer on the errors of the court-martial, and that on a part of the case which was most essential, namely, the alleged disobedience of the 4.30 p. m. order of August 29th, the whole truth was not before them, and there was what has now been shown to have been the most palpable falsehood before them instead of the truth. I suppose that if there is one fact that now stands clear beyond—I will not say contradiction, because the Recorder can contradict anything—but beyond reasonable contradiction, it is, that that order never reached the hands of General Porter until the sun was setting at about half past six; yet the case was passed upon by the court-martial upon the evidence before them, in the belief that it was received by him at five o'clock or half past five. Now, everything is perverted by false evidence. No court can stand up against perjury—no court can stand up against mistake, or against any manner of false evidence, and if you find that they were misled by false evidence, whether intentionally false or not is wholly immaterial, it lessens the weight to be given to the judgment of the court-martial. This is also, I think, fairly to be said upon the record of the court-martial, that whatever weight was given to facts, the facts were outweighed by the opinions of witnesses—the opinions, I mean, of General Pope, General McDowell, General Roberts, and Colonel Smith. If I undertake anything in this argument, it will be to demonstrate to the satisfaction of this court, and of every thinking mind that looks into the case, that the opinions of these witnesses cannot be treated as fair or impartial opinions; that, whether from bias or from mistake and ignorance of fact, it was utterly impossible for them to express a fair and impartial opinion. But that their opinions did carry that court-martial, there is and can be no doubt. As to both General McDowell and General Pope, with the utmost disposition to do honor to the established authorities, it is our duty in this case to demonstrate to you that if they had stated to the court-martial what they have stated since, and what one of them has stated upon oath before you, General

Porter's conviction could not possibly have taken place, and he would have been discharged by that court, not with condemnation, not with rebuke, but with honor.

Now, as to the rules of evidence applied by the court-martial, I think that, if they were overborne by popular impulse, if they were men and not gods, if their minds were biased by causes which they could not help or prevent, perhaps you would find some signs of it in their proceedings. And so, and only for that purpose, I ask you to look into the record for the purpose of seeing how they treated certain questions of evidence which are subject to well-established rules. And first, when General Pope was on the stand, at page 20 of the court-martial record, a question was put to him which was certainly very material—in a case tried upon opinions, to the last degree was it material:

Question. If, as you have stated, you were of the opinion that the army under your command had been defeated, and in danger of still greater defeat, and the capital of the country in danger of capture by the enemy, and you thought that these calamities could have been obviated if General Porter had obeyed your orders, why was it that you doubted, on the 2d of September, whether you would or would not take any action against him?

The witness declined to answer the question, as not being relevant to the investigation. The room was cleared for deliberation; and although they allowed the question to be filed, they did not allow it to be answered until the following took place:

The Judge-Advocate said: The witness requests the permission of the court to answer the question referred to in the protest just read. The accused made no objection. The room was thereupon cleared, and the court proceeded to deliberate with closed doors. Some time after the doors were re-opened and the Judge-Advocate announced the decision of the court to be that the witness have permission to answer the question referred to.

Now, is not that a novel method of judicial procedure—to make the admission of a question of evidence depend upon the wish of the witness and not upon the rights of the accused? First, to exclude the evidence as irrelevant, because the witness refused to answer it, and then to admit it as bearing against the defendant, when the witness requested permission to answer it. A whole day for deliberation intervened. It was not admitted the second day because of any mistake in the judgment of the court on the first day, or of any change of opinion as to its relevancy, but because the witness changed his mind and his wish. Well, you cannot sit in review upon that; but, does it or not tend to confirm the suggestion that we make on the part of General Porter, that that court, from the necessities of the situation, could not be judges? I will not state all the numerous instances of this kind, but I will call attention to three or four more.

The same witness, General Pope, was still being examined by the accused. He had given an opinion against General Porter, whose counsel wanted to test that opinion.

Question. Bearing in mind the terms and tenor of the order of 4.30 p. m. of the 29th of August, and its direction to the accused to attack the enemy's flank, and, if possible, his rear, and at the same time to keep up communication with General Reynolds, on the right of the accused, please to inform the court whether, if it could have been foreseen at 4.30 p. m. that at the time when the accused should receive that order he would find himself in front of the enemy in large force, in such a position that he could not outflank the enemy without severing his connection with General Reynolds, on his right, would you, if that state of facts had been foreseen at the date of the reception of the order, have expected or anticipated obedience from the accused to the order, according to its terms?

He had already testified against the accused that he would expect obedience to the order as the question had been put. Here was a ques-

tion put to him on cross-examination for the purpose of testing the weight of his opinion in every aspect of the facts of the case; it was the clear right of the accused to put the question. The question was objected to, and after a good deal of discussion, and after the clearing of the court and its deliberation—

After some time the court was reopened; whereupon—
The judge-advocate announced the decision of the court to be that the witness shall not answer the question propounded by the accused.

Then, when the court-martial had General Roberts (at page 49 of the record) under examination, the same sort of a question, as it appears to me, was decided in a different way. He was now being examined by the Judge-Advocate:

Question. In view of what the army had accomplished during the battle of the day in the absence of General Porter's command, what do you suppose would have been the result upon the fortunes of the battle if General Porter had attacked, as ordered by the order of 4.30 p. m., either on the right flank or the rear of the enemy?
(The accused objected to the question.)
The court was thereupon cleared.
Some time after the court was reopened, and the Judge-Advocate announced that the court determined that the question shall be answered.

What I have to say is, that undue weight was given to the opinions of the generals who testified adversely, and that they were not freely permitted to testify upon one side as upon the other. For, further, it appears that on the cross-examination the accused was not allowed to test his opinion which had been introduced on the direct. On page 51 of the court-martial record, when the same witness was under examination by the counsel for the accused, this occurred:

Question. Did not the joint order specially exclude from the discretion of Generals Porter and McDowell the necessity of their remaining in such position as to enable them to fall back behind Bull Run?
(The question was objected to by a member of the court.)
The court was thereupon cleared. After some time the court was reopened, and the Judge-Advocate announced that the court determined that the question shall not be answered.

Now, whether these and other similar rulings could have been reviewed or not in a court of law is not the question. There are many more of the same sort. They have been carefully digested in a previous paper, which will be placed before this Board.* I only call the attention of the Board to them for the purpose of demonstrating, as it seems to me they demonstrate themselves, that the times were not favorable to the administration of justice by that Board upon the case and the questions that were before them; so I will not trouble the court with any more reference to what may be called internal evidence from the record. I only claim from all these circumstances that I have now brought to the attention of the Board that there is good ground for saying that the judgment of that court-martial, as a judgment, ought not to stand in the way of justice now on any of the questions involved in the record; that it does appear that they were not placed in a position that rendered it likely, or, as we think possible, for them to bring to bear a clear, undisturbed, unbiased, judicial mind upon the questions before them.

So, too, in regard to the opinion of President Lincoln. There is no man in history for whose opinion on a case like this, if he understood it, if the facts were before him, I would claim greater weight than for that of President Lincoln, and I believe that will be the judgment of the country. You will observe, in the first place, that these errors which were committed by the court were all involved in the record upon

* The appendix to reply of Hon. Reverdy Johnson to Judge-Advocate Holt.

which it was his constitutional province to pass; and if he had examined that record and then approved the sentence, they would have been committed by him also. But we have made it clear that President Lincoln did not examine the record, that he could not have examined the record, and that he made his decision not upon the evidence, not upon any opinion of his on the evidence and the facts in the case, but upon the paper that was of a nature to mislead him, prepared by the Judge-Advocate General under the order requiring a fair and judicial revision to be made of the whole evidence, but which unfortunately sets forth only parts of the evidence, as it appears to us, in a cruel and vindictive spirit, and in a way calculated only to prejudice and poison the mind of the reader against General Porter and against the truth. The great pressure of his overwhelming official duties in that crisis of our country's fate left the President no time to examine the record, and compelled him to rely, as he had a right to rely, upon what he believed to be a fair judicial review of the evidence, but which was, in fact, the one-sided and embittered statement of an advocate determined upon the ruin of the accused. We proved that by Governor Newell, because President Lincoln told him so. When application was being made to President Lincoln for relief on the part of General Porter, he said to the governor, in substance, that he had not been able to read the record. Do not the dates demonstrate with equal clearness that he had not and could not have done so? The judgment and sentence were pronounced on Saturday night, the 10th of January. On Monday morning the order was made by the President—this order requiring the revision for the advice and determination of the mind of the President to be made by Judge-Advocate-General Holt. Yes, on the 12th, one day prior to the proceedings having been forwarded to the Secretary of War for transmission, under the law, to the President. So that the proceedings were not in the President's hands before they went to Judge-Advocate Holt, or before the 19th, when his pretended review bears date. For on the 19th comes that extraordinary paper, which has been sufficiently reviewed and exposed by Mr. Bullitt; a paper calculated not to lead the President to the knowledge of the facts, but to lead him away from the knowledge of the real facts; and on that he based his judgment approving the action of the court-martial.

I have said before that we were much obliged to the Recorder for calling many a witness that we did not know of and could not have obtained. He calls a son of President Lincoln; and if there was any doubt before about how much and what sort of weight ought to be given to the opinion of the President, it is terminated by his evidence, is it not? What does he say? He was then a young man of nineteen or twenty, and his father was in the habit of talking with him confidentially. One day he found his father reading or meditating on the Porter case; and the President produced to him, what? Why, that dispatch of General Porter to Generals King and McDowell in the latter part of the 29th of August, indicating an intention to withdraw to Manassas, in accordance with the injunctions contained in the joint order of General Pope. Where did he find that? Why, it was set forth in full in the opinion, in the paper, prepared by Judge-Advocate-General Holt. The whole fact of the retreat was there; and that was all the retreat there was; and we shall find that, instead of being a censurable purpose, it was altogether praiseworthy under the circumstances as now known and the facts out of which it arose. But the President was led to believe, because it is so stated in that paper of Judge-Advocate-General Holt, that there was no doubt that General

Porter carried out and acted upon the intention declared in that letter and did retreat, believing that the rest of the army was standing its ground against destructive odds. It was in this false belief that the President evidently spoke. Now we know, if we know anything, that the dispatch to Generals McDowell and King meant nothing of the sort, and that there was no retreat. Then what did President Lincoln say? And this shows exactly what I have said before, as to the discrepancy between the guilt imputed, and the punishment awarded. Why, President Lincoln said that if that was true—if all those malignant statements and those perversions of testimony so insidiously set forth, in the papers of Judge Holt were true—that it would not have been too much or too severe a sentence if General Porter had been condemned to be shot. So, when you examine that opinion and find the basis of it, you will see that, as applied to the facts and circumstances now before the court, it is no more pertinent than if it were in reference to the case of some other officer in some other war. But the striking point in Robert Lincoln's testimony as compared with Governor Newell's is this: The two together show how completely the mind of the President in regard to the case had been changed before his death, and how from being satisfied, and more than satisfied, with the condemnation of Porter, he had come, by a knowledge of the actual facts, to the conviction that in justice he was entitled to a new trial.

THE CHARGES AGAINST GENERAL PORTER.

Let me now take up very briefly these several charges. I propose to consider them in their order, because there is some confusion likely to creep into the case if they are considered otherwise, as the learned Recorder has seen fit to treat them. In respect to the transactions of the 29th, he jumbled up the consideration of all the charges, irrespective of the Article of War under which they are drawn. It may be that an officer is guilty of disobedience and yet is not guilty of the heinous crime of misbehavior in the face of the enemy, running away for the purpose of abandoning the capital of his country to a rebel host; and on the other hand, the accused party might be not guilty of disobedience, and yet guilty of misbehavior before the enemy. So it seems to me that accuracy of judgment can only be preserved by treating of the distinct charges in the order in which they are arranged.

In respect to the first charge, the alleged disobedience by General Porter, of the order of the 27th. I will first read the charge, and then offer a very few observations about it.

Charge 1st, specification 1st—Disobedience of 6.30 p. m. order.

CHARGE 1ST.—Violation of the 9th Article of War.

Specification 1st.—In this, that the said Major-General Fitz-John Porter, of the volunteers of the United States, having received a lawful order, on or about the 27th August, 1862, while at or near Warrenton Junction, in Virginia, from Major-General John Pope, his superior and commanding officer, in the following figures and letters, to wit:

HEADQUARTERS ARMY OF VIRGINIA,
Bristoe Station, August 27, 1862—6.30 p. m.

GENERAL: The major-general commanding directs that you start at one o'clock to-night, and come forward with your whole corps, or such part of it as is with you, so as to be here by daylight to-morrow morning. Hooker has had a very severe action with the enemy, with a loss of about three hundred killed and wounded. The enemy has been driven back, but is retiring along the railroad. We must drive him from Manassas and clear the country between that place and Gainesville, where McDowell is. If Morell has not joined you, send word to him to push forward immediately; also

send word to Banks to hurry forward with all speed to take your place at Warrenton Junction. It is necessary, on all accounts, that you should be here by daylight.

I send an officer with this dispatch, who will conduct you to this place. Be sure to send word to Banks, who is on the road from Fayetteville, probably in the direction of Bealton. Say to Banks, also, that he had best run back the railroad trains to this side of Cedar Run. If he is not with you, write him to that effect.

By command of Major-General Pope.

GEORGE D. RUGGLES,
Colonel and Chief of Staff.

Major-General F. J. PORTER,
Warrenton Junction.

P. S.—If Banks is not at Warrenton Junction, leave a regiment of infantry and two pieces of artillery, as a guard, till he comes up, with instructions to follow you immediately. If Banks is not at the Junction, instruct Colonel Cleary to run the trains back to this side of Cedar Run, and post a regiment and section of artillery with it.

By command of Major-General Pope.

GEORGE D. RUGGLES,
Colonel and Chief of Staff.

—— did then and there disobey the said order, being at the time in the face of the enemy. This at or near Warrenton, in the State of Virginia, on or about the 28th of August, 1862.

The ground has been very fully gone over on our side, and it would be only imposing upon the good nature of the Board if I should detain it very long. In the first place your attention has been called to the comparatively trifling nature of the charge—I mean as compared with the gross magnitude of those in respect to the 29th. It all depends upon what we believe to be an immaterial variance, utterly immaterial, of two hours in the time of starting on the march on the night of the 27th. Without any regard to discretion, to judgment, to reasons that existed to the contrary, without any regard to the circumstances of the case, the learned Recorder asks in the most defiant manner, "Was he not ordered to march at one o'clock? He was. Did he march until three? He did not. Is he guilty? Guilty." Well, if that is the way to dispose of the charge, there is no use of examining it; there is no use of a trial. He was ordered to start at one; he did not start until three. And the Board will observe that the same case might be made if, instead of being two hours, it was one hour, or half an hour, or quarter of an hour. If a court-martial can convict an officer and dismiss him from the service for a variation of two hours from the time at which he was ordered to march without the least regard to the circumstances, they can just as well do so, by the same summary method, for a delay of fifteen minutes.

The learned Recorder made one suggestion in this connection that rather galled me. Even on the court-martial there was a decent regard paid to the feelings of the accused. The forms of courtesy at least were adhered to. But the learned Recorder in his opening argument has suggested that this change of two hours on the night of the 27th was made by General Porter in the hope that those two hours would bring a change of commanders, from Pope to McClellan. I do not think such a suggestion as that is worthy of this Board or of a component member of it. Now that I am upon that subject, let me say also this: that the observations that he made this morning imputing a lack of personal integrity to General Porter are as gratuitous as they are offensive. I do not think he would have made that after deliberation. Nobody ever made any such suggestion before as that General Porter wilfully stated falsehoods in his dispatches—a charge distinctly made by the Recorder this morning. That was not the charge on which he was being tried by the court-martial or retried here. I shall not make any more observations about these insinuations in the further progress of the discussion, except to repeat once for all that they were very uncalled for and very painful to the feelings of the petitioner and his counsel.

As to this order of the 27th. I say, although the complaint was a trivial one, although nothing came of it, and there was no delay resulting, although, as I suppose, it was merely thrown in as a make-weight on the subsequent and greater charges, still General Porter is bound to explain it and justify it. We ask nothing that shall loosen the bands of discipline or impair the cardinal rules of the military service as to implicit obedience to orders. We claim implicit obedience, and we claim intelligent obedience; we claim actual and not fictitious and pretended obedience; we claim that a corps commander should act, and that General Porter did act, not like a machine set in motion by an order which he was not to read or interpret, but that he was an intelligent instrument of the dignity of a corps commander, invested with the functions which the military law imputes to that high grade of service. Now, what is the nature of the question? It is not, as it seems to me, whether he was ordered to start at one and did not start until three. I cannot think that that is the question. If it is, all the labor, talk, and study that has been devoted to it has been thrown away.

The question, it seems to me, is one of intent. Was his failure to march until three, an act of intended disobedience and disregard of the order, or was it a decision justifiably arrived at by him in good faith, in the exercise of his duties and his responsibilities as a corps commander, ten miles from his chief who gave it, and receiving it under circumstances which could not be known to General Pope, who gave it? If you establish the affirmative of the latter question, we claim that General Porter is completely exonerated from this charge. The Recorder has said that General Porter has no right to set up his will against that of the commanding general. Well, so we say. We say he did not set up his will; that he did not assume or pretend to set up his will. His will, his impulse, was to obey the order strictly and to the minute; but his judgment, which he was at liberty to exercise, which he was bound to exercise, required him not to move until the near approach of day. In the first place, in regard to this order, I make one observation, and that is, that whatever may be the duties of corps commanders in the interpretation and execution of orders, they have a right to expect that all orders that are sent to them by their chiefs at a distance shall be both intelligible and possible of execution—I mean possible within the view of the sender. Now, was this such an order? Although the Board are perfectly familiar with the order and the objects expressed upon its face, I will read it once more.

I want to ask whether you think that General Pope thought it was possible of exact execution when he gave the order. Because, if he did not, the rule of discretion conceded by the Judge-Advocate and conceded by the learned Recorder comes in. Applying the test of the Napoleonic rule in respect to obedience and discretion, as to orders given by a commander at a distance, it is contended by both of those learned legal authorities that there is no discretion as to the end, although there may be a discretion as to the means. The rule is as follows:

> A military order exacts passive obedience *only when it is given by a superior who is present on the spot at the moment when he gives it.* Having, then, knowledge of the state of things, he can listen to the objections and give the necessary explanations to him who should execute the order.

The prosecution in that view says that this order was to get to Bristoe by daylight, and if he could get to Bristoe by daylight by starting at some other hour than one o'clock, all right, no offense given or taken in changing the hour of starting; but there is no discretion as to the end. Well, suppose you have a written order of which the sender does

not believe the end was possible; suppose General Pope orders General Porter to march from Warrenton Junction at one o'clock, so as to get there at daylight, when he knows it is not possible for him to get there at daylight, or when he has fair reason to believe that it is not possible for him to get there at daylight, and that General Porter on receiving it knows that; how does that affect the application of the rule as to discretion, if there is such a rule? It removes the end altogether, does it not? If the commanding general orders a corps commander to march at one to reach a certain place by daylight, knowing that he cannot do it, even by starting at one, what is the next conclusion? How is it to be construed? Why, it is to get there with all practicable speed, is it not?

Now, I want to ask the Board whether they believe that General Pope, when he said start at one a. m., and get to Bristoe at daylight, thought Porter could do so? That is an important question. If General Pope had honored us with his presence, we could have found out from the best authority. But when he stood at his post in Kansas and said he would not come upon a request, but would come upon a subpœna, and then when he was subpœnaed said he would not come at all, and defied the summons of this Board, we have a right still to explore the case for his motives and his knowledge. And, fortunately, we are not without the means of ascertaining them. It so happens that General Pope had gone over this very road from Warrenton Junction to Bristoe that afternoon, starting in the latter part of the afternoon and getting there early in the evening, and he knew something about the condition of the road. He did not know how it was after the wagon trains had closed up behind him, but he knew something about the distance and the condition of the road as it was when he went over it. He was accompanied by two very intelligent and distinguished officers. He went alone with those few personal attendants on horseback, and it took them a good while to go; I do not know how long, but more hours than he allowed to this army corps to go in the middle of the darkest night and get there at daylight. Having got there, he sends an order for this army corps to start at one, saying that it was necessary for them to be there at daylight. Now, what I say is, in the voluntary absence of General Pope, if you have the judgment of two equally competent persons who were with him when this order was issued, and who accompanied him on that journey, you have, I think, a pretty fair means of testing whether General Pope thought it was a practicable or possible order. I refer to the evidence of General Ruggles and General McKeever, to both of which I shall ask permission to call the attention of the court.

I will read McKeever's testimony first, at page 147:

Question. I will ask you whether, in your judgment and experience, a military commander, who had himself accompanied an army corps over that road in daylight that day from Warrenton Junction to Bristoe, would have deemed it advisable for another army corps of 9,000 men, with artillery, to leave Warrenton Junction at one o'clock in the morning to reach Bristoe Station by daylight or near that hour?

From the answer it is evident that the word "advisable" is a misprint for "practicable."

Daylight, I believe, for the purpose of this discussion, is generally admitted on all sides as about four o'clock.

Answer. That is a difficult question to answer. It did not seem to me at the time to be practicable.

There is a clear and emphatic opinion by one officer entitled to great weight, as it seems to me.

On page 279 General Ruggles, General Pope's chief of staff, says:

Question. Have you heard the proof here, or do you know what has been proved the obstruction of that road by 2,000 or 3,000 army wagons?

Answer. I knew there were a large number of wagons and that the road was blocked; I heard that after General Porter had come up. I knew that the road was reported to have been heavily blocked with wagons.

Question. Do you know anything of the darkness of that night?

Answer. I know it was very dark, so dark that I lost my way going a few hundred feet from the bivouac.

Question. How do you recollect that?

Answer. I recollect that from the reason that I had nothing to eat since morning. Our mess-wagon came up; our cook had been captured, and we could not find any servants, and I had to stumble round in the dark myself. I think we shouted and hallooed to people, and finally we got to the wagon; then I got in and looked around, but could find nothing more than a ham bone, the same as Colonel Johnson; the ham bone had been pretty well picked.

Question. Does your experience enable you to form a judgment as to the practicability of an army corps on such a night, with a road obstructed as you understand this to have been, starting from Warrenton Junction at 1 o'clock a. m., to reach Bristoe Station by daylight?

Answer. *I don't think it could have been done.* I recollect that road as I came through.

And he came through side by side with General Pope.

It ran part of the way through groves or woods; and I recollect that there were stumps of trees and of saplings in the road; that the road was filled with these little stumps; that the road itself was tortuous. I think the men would have been impeded in the road by the trains, by these stumps, and by the crookedness of the road. According to my recollection, there were several runs that crossed the railway between those two points, and over these runs were open bridges. I think the men could not have marched upon the railway, because in the darkness they would have fallen through these open bridges.

Now, does not that satisfactorily establish that General Pope, when he gave that order, could not himself have deemed that it was practicable to obey it? If so, what becomes of this rule, urged by the Judge-Advocate and by the Recorder, that the corps commander, in such a case, has no discretion as to the end? There is no end if the end is impossible, except the end indicated by the order as the object of calling the army corps over the road. As it has been pressed against General Porter, we have considered whether it was possible. But, further, was it quite fair and honest? It was pressed upon the attention of the President, you will recollect—and the court seems to have been imposed upon to believe—that the immediate occasion of giving this order was, because, after the fight with Ewell in the afternoon, it was found that Hooker had got out of ammunition; and Porter having ammunition, that was the reason for sending for his corps to come up; and, also, because of an anticipated attack in the morning by the returning enemy. Both those considerations were urged upon the President, in the review by the Judge-Advocate, and he was led to believe, as I understand, that that being the purpose for which the order was sent, was the reason for its urgency, as made known to the court-martial. Well, now, if those were the purposes, would not it have been fair to put them in the order? If General Porter was afterwards to be tried and convicted for not obeying an order, the urgency of which was that they were out of ammunition and expected an immediate attack, would it not have been fair to put one or both of those reasons in the order?

PRETENDED REASONS FOR THE ORDER.

Let us see now how this matter about the ammunition and the anticipated attack stands. General Pope made a report of September 3, which has been put in evidence, but not yet called to the attention of the court,

and it is to be found in this Board Record, on page 1115. In that was the first suggestion that this order was sent on one of those accounts. There it is stated in this way, on page 1116:

The unfortunate oversight of not bringing more than forty rounds of ammunition, became at once alarming. At nightfall, Hooker had but about five rounds to the main left. As soon as I learned this I sent back orders to Fitz-John Porter to march with his corps at one o'clock that night, so as to be with Hooker at daylight in the morning.

He does not say anything about any anticipated attack in the morning. But he afterwards, January 27, 1863, made what is called his official report; and there both these circumstances for the first time appear. There, at page 18, he puts it in this way:

Thinking it altogether likely that Jackson would mass his whole force and attempt to turn our right at Bristoe Station, and knowing that Hooker, for want of ammunition, was in little condition to make long resistance, I sent back orders to General Porter, about dark of the 27th, to move forward at one o'clock in the night, and report to me at Bristoe by daylight in the morning.

You will observe that the order says nothing about either of these matters. The order describes a very different state of things, and of purposes. After giving directions to come, and referring to the fight that Hooker has had, the order says:

The enemy has been driven back, and is retiring along the railroad; we must drive him from Manassas and clear the country between that place and Gainesville, where McDowell is.

And these are the only purposes expressed in the order. Nothing about ammunition, nothing about an anticipated attack; and for two reasons: First, he did not know when he sent the order that they were out of ammunition; and, second, he had no reason for anticipating an attack, because he thought the rebels were retreating, and wanted Porter there to pursue them. Now, the Recorder says that General Pope and General Heintzelman, and all the witnesses, prove that Pope knew, when he gave the order, that Hooker was short of ammunition. I take direct issue with that statement, and say that they do not; that they prove just the contrary: that they prove that General Pope did not know of the ammunition being short, and did not know of the anticipated attack when he wrote this order. The order is dated 6.30 p. m., which is sunset: an hour after that it is dark. General Ruggles, in his testimony before this Board, says he wrote the order and dispatched it before reaching Bristoe, where Pope arrived at dark; and then, and not till then, could he have received any report of lack of ammunition on the part of Hooker. General Pope, on page 12 of the court-martial record, says "just at dark." Very precise. This is his sworn statement:

Just at dark Hooker sent me word, and General Heintzelman also reported to me that he, Hooker, was almost entirely out of ammunition, having but five rounds to a man left.

General Heintzelman, at page 80 of the same record, says this:

Question. What information have you in regard to the condition of General Hooker's supply of ammunition after the battle of Kettle Run, on the 27th of August?
Answer. A portion of his division was nearly out of ammunition.
Question. Was or was not that fact made known to Major-General Pope in the afternoon of the 27th of August?
Answer. Late in the afternoon it was.

Well, this says late in the afternoon. But that precise point of time is fixed by General Pope, for he says it came to him just at dark; and he ought to know. Then the witness Dwight does not help the Recorder

at all on that matter. His evidence appears at pages 722 and 724 of the Board record. He says, after the fight:

> We were short of ammunition. I was sent by Colonel Taylor to General Hooker to ascertain what we should do in case we were attacked during the night, as there seemed to be some doubt as to whether it was a rear-guard or whether there would be an attack made. General Hooker replied to me, nearly as I can recollect: "Tell Colonel Taylor that we have no ammunition, but that there has been communication had with General Pope, and General Pope has communicated to General Porter, and General Porter should be here now. He will be here in the morning certainly."

And on page 724:

> Question. What time did you go into camp?
> Answer. Some time in the afternoon When we communicated with General Hooker it was towards dark, if I recollect.
> Question. How near dark?
> Answer. It was dusk; I could not say the hour; late in the afternoon.
> Question. May it not have been before dark?
> Answer. No, sir; it was quite dark.

Thus you have all the facts and circumstances; and you have the time when Hooker communicated to Pope, and it was just at dark. There is not a particle of evidence in the case varying it from that. Writing his order to General Porter at 6.30, he does not say a word about ammunition, because he knew nothing about it; and yet, in his report, and on the trial, and before the President, it was imputed to General Porter that this order was based upon the urgency of a want of ammunition known to General Pope at the time he sent it.

PORTER'S INTERPRETATION OF THE ORDER AND ACTION UNDER IT.

The first thing, in considering the action of General Porter under this order, as it seems to me, is to inquire how it must have been considered by him when he received it. It was brought by Capt. Drake DeKay, whose evidence was taken on the court-martial. Now, what is the fact about Drake DeKay's arrival with the order and how did he come? He came alone; he came on horseback with this order, which is regarded all around as one of great urgency, and he came as fast as he could, did he not? I suppose so. He claims so. Now, what time did he get there? The learned Recorder thinks he got there about 9 o'clock. But General Pope, in his report of the 3d of September, states the exact hour. He says:

> The distance was only nine miles, and he (Porter) received the dispatch at 9.50 o'clock.

It is said that General Porter did not know very much about the road. Didn't he? He knew that there was an aide, bound to make all possible speed, coming alone on horseback over the road, starting at 6.30—that is, with the advantage of the last hour of daylight—and it took him three hours and twenty minutes, which was twenty minutes more than General Pope proposed by the order to allow an army corps to go the same distance over the same road, in the darkness of midnight, afoot. Did not General Porter know anything about the condition of the road? Was not the first thing that necessarily came to his mind the impracticability of exactly executing the order? It seems to me that is beyond all question. What else came with it? Why, DeKay complained that the road was obstructed, and of the great difficulty he had had in getting through. Now, if he had had great difficulty in getting through alone on horseback, because of the obstructions of the road, General Porter at once saw that to an army corps, going without any light what-

ever, on foot, and with their artillery, as they were required, it was an impossible order. What was his first impulse? There is a great deal of talk about *animus* in this case. The first words that an officer utters when he receives an order have a very strong bearing upon the question of *animus*. He says, this order must be obeyed; General Pope, who gives it, knows what he wants. Let us start at once! To whom does he say that? To his division commanders: all men of character and unquestioned loyalty and integrity—Morell, Butterfield, and Sykes. Some criticism is made as to the manner of the petitioner, whether he read the order aloud, or whether he handed it to each one of them, or whether they knew its entire contents. But General Butterfield says he handed it to Sykes or Morell; and I think General Warren says the same thing. And Mr. DeKay says that they discussed the subject-matter; he told them what had happened, and that he was sent to guide them back.

Now comes the question of discretion. These division commanders, all three of them, instantly united in a common protest against starting at one o'clock. And on what ground? Because of the jaded condition of their troops, taken in connection with the impenetrable darkness of the night, for it was impenetrable at that time, and the blocked condition of the road, it being absolutely blocked up with wagons. Wagons had been rolling through there all day on the retreat to Alexandria, as specified in the orders of General Pope, which I will presently read to you. Now, it seems to me that the question which is presented in a military sense (and on that I speak with infinite distrust) is this: When the division commanders, who are charged with the responsibility for the welfare and condition of the troops and the performance of a march, unite in such a protest on such a ground, ought their protest to be taken into consideration? There is the test of the guilt or innocence—of the alleged disobedience. Ought such a protest to be taken into consideration? Well, General Porter thought it ought. And if it ought, who is to consider it? Who is to say whether, in view of the jaded condition of the troops, or some of them, and of the infinite darkness of the night, and of the absolute blockade of the road—who is to pass upon that question, or is it not to be passed upon at all? Is it to be considered, and if it is to be considered, who is to consider it? General Pope, who gave the order, cannot consider it; he is ten miles away, and does not know these circumstances. If you answer the question, yes, that it is to be considered, the whole question of disobedience passes away, for General Porter is the only man left to consider it; the rules of war place him there as the substitute of General Pope. That is the way it appears to me. You will observe that while it is an absolute and peremptory order, if you please, to start at one and get there by daylight, yet it gave the reasons why his presence with his corps was wanted. On this question of whether he ought to consider the protest of his division commanders in view of the terms of the order, what the order says as to what he was wanted for, as it seems to me, comes in:

> The enemy has been driven back; but is retiring along the railroad. We must drive him from Manassas, and clear the country between that place and Gainesville, where McDowell is.

He was wanted, then, to be there, not at daylight—not at all; General Pope, as we have seen, never could have suspected it possible for him to be there at daylight; he was wanted as early as he could get there in the morning to pursue the retreating rebels, and sweep the country between Manassas and Gainesville.

Now, was it the thing, in a military point of view, for a corps commander so situated, receiving such a protest on such a ground from his

division commanders—was it right for him to take the protest and the circumstances into consideration, in view of what he was wanted at Bristoe for? Well, we submit that it was. We submit that just that protest, on just those grounds, raised the question, whether he could be there so as to fulfill the purposes for which the order said he was wanted—not his own ideas, not his own purposes—but General Pope's statement of what he was wanted for. If you find, first, that it was right for him to exercise that judgment; second, that he exercised it in good faith; and, third, that he exercised it on fair and reasonable grounds and knowledge, he must stand acquitted. It does not seem to me that there can be the least doubt, regarding it as a question of law, or military science, or common sense. I suppose that in your profession, as in ours, great questions of law, and great questions of military duty, alike depend upon the dictates of common sense, and are governed by them.

Now look at the ground of protest as bearing upon the objects of the order, as stated in the order. What kind of obedience did it call for? Did it call for General Porter to plunge his corps into the absolute darkness of midnight, at one o'clock, and throw them into inextricable confusion, and set them floundering about in camp, or at the first run, so that they could not be extricated until after daylight, and so that they could not start on the road until long after they had broken camp? I suppose that it called for an effectual, serviceable obedience. That is what common sense dictates. That is what we suppose military laws and regulations require. General Porter heard the protest. What did he know that General Pope did not know? Well, he knew the condition of the road as Drake DeKay, the messenger, found it. He knew the condition of the road, as his officers knew it; as his aides-de-camp, Captains Monteith and McQuade, who had been sent out for the purpose, had reported to him. And then, as to the condition of the troops, General Pope had not made any inquiries about that; there is not the least scintilla of evidence in the case that he had any knowledge whatever about it. Well, these troops that had been making day and night marches all the way from Aquia Creek—their condition is not to be tested by a question of how many hours and minutes they had been in camp that day, or that night, but upon the knowledge and honest judgment of their direct and immediate commanders, exercised in good faith, as to their condition. The Recorder says that the direction of the order was, that Sykes should come alone. That was not so. Sykes was not to come alone. Nobody was to come alone: if Morell was not there, Sykes was to come alone; but if Morell and Sykes were together there, as the proofs show that they were, then the order is imperative.

The major-general commanding directs that you start at one o'clock to-night, and come forward with *your whole corps.*

THE CONDITION OF THE ROAD.

Briefly, as to the condition of the road. The evidence on this subject is very full. So fully has it been developed that I will not refer to it. I understand the substance of the evidence to be that there were between 2,000 and 3,000 army wagons upon the ten miles of road. In one respect it will be seen that this case differs from its attitude before the former court upon this question; the government has abandoned the pretense that he could have gone along the railroad, because, I suppose under the evidence of McKeever and Ruggles, the Recorder thought it was idle to make any such claim as was claimed before. Well, then, it was a common dirt road, and not a turnpike; running partly through

the woods, and blocked up with 2,000 or 3,000 army wagons, which, if stretched out one by one, would occupy 24 miles in length; and if they were doubled up it is very difficult to say how even a horseman could get through without the greatest difficulty, as Drake De Kay found when he undertook to come alone.

DARKNESS OF THE NIGHT.

The character of the night also has been pretty amply developed. If ever there was a dark night, it appears to me, from the evidence, that this of the 27th of August, 1862, was it. They say that there were other marches that night. Yes; there were. There was the march of King's division. I should think a dozen privates had been brought here from Gibbon's brigade, King's division, to say how they marched that night. Do you recollect the evidence of General Patrick and General Gibbon about it? They were terminating a march that night, floundering and straggling along, going into bivouac at ten or eleven o'clock. The evidence of General Patrick is that he had to stretch a line of men across the road, in order that the troops might be stopped as they came along and turned aside, for it was not possible for them otherwise to see that those in advance had stopped. Then it is said that Lieutenant Brooke made a ride from Pope's headquarters to Greenwich, with a troop of sixteen men, to carry an order to General Kearney and another to Reno. Yes; he did. How did he do it? Riding on an unobstructed road it took him three hours and ten minutes to go four and a half miles. There is also another very significant piece of evidence in the case, because it is the testimony of one of the main witnesses for the government: Lieut. Col. T. C. H. Smith went out on a scout, as he calls it, and he made five miles between one o'clock and six o'clock. He says he was scouting for rebels, but I don't think he was. I think he was scouting for General Porter; for he says that he came around soon after daylight or about six o'clock, at a distance of two or three miles from Bristoe, whence he had started, and then and there saw the head of the column come up, with General Porter at the head. Colonel Smith was, as you know, one of the most malignant of witnesses against General Porter. But he confessed that there was that night, beginning at nine o'clock or thereabouts and extending until eleven or twelve o'clock, a storm of darkness that exceeded anything he had ever witnessed; the darkness was absolute; he could not see his hands before his eyes; what eyes he has the Board know, because it was those marvelous optics that saw treason lurking in the eye of General Porter on the next day, the 28th of August. The darkness, according to him, was total. He says it is true, that at one o'clock, when he started out, it was not so dark; that he could see the forms of the houses and fences in Bristoe; but he forgot to add what we called out from him on further examination, that the light of the fire at Manassas, that was made by Jackson burning our ham and bacon and flour in such immense quantities, was still perceptible, but even that light was extinguished by the Cimmerian darkness of the storm between nine and twelve o'clock. Now, there is something singular about this. When General Porter was called upon to act upon this order, it was right in the middle of the Egyptian darkness of that night, as depicted by Lieut. Col. T. C. H. Smith. I do not think the Recorder had ever considered that when he pretended there was not any new evidence in the case on the subject of the darkness of the night.

Another suggestion was made by the learned Recorder. I must admit that it would be unfair to ask any lawyer or military man to charge his

mind with all the proof in this case. It is not possible. No man's skull is large enough to carry it all, and therefore I do not blame the Recorder for forgetting it. But he would not have asked the question that he did ask if he had remembered the evidence. He asks, why did not General Porter send back word to General Pope that he was not going to start until daylight, and his reasons for not starting? Well, the answer is, he did. After a lapse of sixteen years, when we have such an infinite variety of facts brought out with such perfect clearness, it is one of our grievances that we still lack four things, four links in the perfect chain of proof. I refer to the failure of General Pope to produce the three dispatches which he received on the 29th from General Porter, and the dispatch that he received on this night of the 27th, when General Porter, at the close of the deliberations of his council of war, sent a written message by special messenger to General Pope, declaring that he could not start, and why he could not start, at one o'clock, the hour mentioned in the order, and when he was going to start. That is so important that I want to call the attention of the Board to the evidence on the subject. General Pope, at page 13 of the court-martial record, testified as follows:

Question. Did he at that time, or at any time before his arrival, explain to you the reason why he did not obey the order?

Answer. He wrote me a note, which I received, I think, in the morning of the 28th, *very early in the morning, perhaps a little before daylight.* I am not quite sure about the time. The note I have mislaid. I can give the substance of it. I remember the reasons given by General Porter. If it is necessary to state them I can do so.

And on page 27:

On the contrary, from a note that I had received from him, *I did not understand that he would march until daylight in the morning.*

Question. Have you, sir, in your possession, or can you readily find in this city that note?

Answer. I cannot, as I stated in my evidence yesterday. As the same statements contained in the note were made to my aid-de-camp, if other testimony on the subject is necessary it can be got from him.

Question. When you received the note which, according to your recollection, stated that he would be unable to march, or would not march until daylight, will you state at what hour you received it?

Answer. I think that, in my testimony, I stated that it was quite late in the night. I do not remember exactly the hour; I think towards morning—towards daylight; perhaps a little before that.

Question. Did you take any steps, by message or order, in another form, to the accused to expedite his march?

Answer. I sent back several officers to try and see General Porter and request him to hurry up.

Now, he sent back several officers, because of the answer he received from General Porter. He also says that this note expressed the reasons of the change in the execution of the order. We do not accept General Pope's statement that he mislaid this order. He had no right to mislay it. If he mislaid it he should have found it. It is not for the general commanding an army to come into court and say that he has mislaid or destroyed his dispatches when he is seeking the condemnation of an officer in respect to matters which would be explained if those dispatches were produced. General Ruggles has testified that when he ceased to be chief of staff of General Pope, on leaving Washington at the end of that compaign, General Pope required him to hand over all his dispatches, which he did; and he says all were preserved. General Smith, who was aide-de-camp to General Pope, in the same capacity, testified as positively that he handed over to General Pope all the dispatches that he had had. The learned Recorder has quoted a good deal of Latin. I will give him a sentence: "*Omnia presumuntur contra spoliatorem.*" A favor-

ite maxim of law, that all things are to be presumed against the destroyer of evidence. There never was a more outrageous pretense or claim made than this, to condemn General Porter for disobedience of an order, and for not explaining the nature of his reasons for that disobedience, when the commander has destroyed or mislaid the note which he received, stating why the order could not be obeyed.

I say there was no delay, no time lost. But suppose that instead of this intelligent obedience and this rational exercise of the functions of a corps commander, having in view the carrying out the expressed purposes of the order in the best way in which they could be accomplished, he had floundered out at one o'clock, as the order required, knowing that he could not, by so doing, get there at daylight in this darkness, as described by Colonel Smith, that they had been involved in the inextricable confusion incident to such starting, and, instead of getting to Broad Run with the head of the column at eight o'clock, as did happen, the corps had been delayed so that the head of the column did not get there until ten or eleven o'clock; he would have appeared to obey the order and he would not have obeyed it. Would not he have been culpable? I am not competent to answer the question. I put it to you as military men; would not he be blamable for making a pretended obedience to the order, and not a real and intelligent obedience, if it had resulted in a delay that had thwarted the objects of the order as indicated on its face?

The Recorder has referred to certain worthless evidence on this subject, of one Buchanan. Buchanan says that he was in front of Porter's headquarters at 3 o'clock and there were no signs of life till after break of day, and that he waited there and saw nothing of Porter till after sunrise; but it turns out from the evidence of Locke and Monteith, who were in personal contact with Porter, that General Porter was already out upon the road endeavoring to clear it to expedite that march in the dark. Then Solomon Thomas, corporal Thomas, who is always brought in when the Recorder don't know whom else to appeal to—he is brought in to say that they did not start as soon as they should: but it turns out, on his cross-examination, that he says they did start at one o'clock a. m., and did not get to Bristoe until two o'clock the next afternoon.

I call the attention of the Board to another matter, which seems to me to be worthy of consideration.

Several very eminent legal gentlemen have expressed to General Porter their views upon this case; and, if the Board will permit me, I would like to read a short extract from the opinion of Charles O'Conor, which seemed to me exceedingly sensible and entitled to the greatest consideration, and we will treat it as an offset to the opinion of the Recorder:

> After making all proper inquiries and consulting with his chief subordinates, the accused, in conformity with their judgment, deferred the time of starting on the directed march for two hours. This was regarded by the court-martial as an unauthorized deviation from the chief's instructions. For the defense it was asserted that, owing to the darkness of the night, the condition of the road and the obstructions upon it, nothing could have been lost by the change, either in celerity of movement or in the time of arrival, and that the exhaustion of General Porter's troops from their previous service was such that their arrival at daybreak, if practicable by means of a start at the hour indicated, would have been unavailing for the purpose in view. On some of these points the evidence was slightly conflicting, but that in the affirmative preponderated. In my judgment no examination of it was or is necessary. The finding manifestly went upon the ground that in respect to the hour of starting the order was positive in its terms, and that implicit obedience, if physically possible, was therefore an imperative duty. I think this view was not sustained by the law or the fact. A careful inspection of the order should convince any one that the writer did not intend to fix positively the time of starting or that of completing the march; taking its whole contents into view, it imported nothing of the kind. The prosecutor was con-

scious of this, for, upon the trial, he sought by means of the oral extrinsic evidence hereafter stated to import into the document a meaning quite contrary to its purpose and to anything which General Pope intended to convey, or which General Porter could have supposed or even imagined at the time he received it. It advised him (§ 2) that a severe action had taken place (at Bristoe), in which the enemy had been effectually and decisively defeated and driven back, so that he was retreating. It also stated distinctly (§ 3) that the step then in view and determined upon was, "to *drive* him from Manassas and *clear* the country between that place and Gainesville." This cannot be regarded as idle gossip; the facts must have been communicated with a purpose, and that purpose could not have been anything else than to give the subordinate full knowledge of the object and intent of the directed march. The words of the direction itself (§ 1) were indeed peremptory; but this was merely the writer's fashion of speaking. If they were intended to exact the same blind obedience that, standing alone, they might seem to enjoin, adding a statement of the cause or motive was superfluous. Nay, more; it was extremely objectionable, for it implied that the subordinate was not expected to act blindly, but to exercise his judgment. Looking to this announcement (§§ 2 and 3), we perceive that it conveyed to General Porter, in the plainest and most intelligible form, information that his troops were not needed either to make an assault at daybreak or to aid in repelling one that was apprehended at that time. And, on the contrary, it showed explicitly that they were to be employed in a service essentially different. Their presence was sought as auxiliaries in the pursuit of a defeated and retiring enemy.

On behalf of the prosecution it was testified at the trial that General Pope's reason for directing this night march was an apprehension that the enemy, though defeated and driven back, might learn that his victorious opponent, General Hooker, was short of ammunition, and, inasmuch as he had not been actually routed, he might, by that intelligence, have been encouraged to contemplate an attack on Hooker in the morning. The date and tenor of the order, in connection with this very testimony (Rec., p. 12), show that the latter was in all respects a mistake. General Pope says it was "just at dark" that he learned the want of ammunition. The order was written, dated, and dispatched at sundown, an hour before dark. It contained no reference to the want of ammunition. Instead of advising General Porter that, as this testimony suggests, the enemy "still confronted Hooker's division at Bristoe Station," it stated the very reverse, *i. e.*, that the enemy had been driven back; and most emphatically, in words of the present tense, it announced that he was *then*, *i. e.*, at the date of the order, "*retiring* along the railroad." And this, too, was made the basis of a superadded exultant resolve to follow him into the territory to which he had retreated, and thus clear the country of him. It *could* not be supposed that General Pope had in his mind when he dictated this order the want of ammunition or an apprehended assault at daybreak.

The evidence of his somewhat communicative messenger, and the whole frame of the order, preclude such a view of the case. These facts must have come to General Pope's knowledge subsequently to the transmission of the order. Peremptorily enough, to be sure, in § 1 he directed the start at one o'clock; but, conscious that in §§ 2 and 3 he had shown the absence of any necessity for a night march, he returned to the subject at § 5 and, in what must be deemed an advisory or persuasive shape, expressed the desire for an arrival at daybreak. Preliminarily to the expression of this desire he evidently attempted to state some more forcible reason for it. But the attempt was ineffectual; for, in fact, none existed except that already indicated, *i. e.*, the project of an early start from Bristoe in the intended pursuit. The phrase "on all accounts" defined no ground of urgency; and the word "necessary" was evidently employed as synonymous with expedient. (Rec., pp. 19, 20.) Inexact writers, and even those who are generally accurate, often use the word in that sense. I have said that this attempt to engraft upon the written order, by means of oral extrinsic evidence, a supplement or postscript quite inconsistent with its actual terms, must have been founded in mistake. Using the expression in no inculpatory sense, I must say it appears to be a mere afterthought; not, indeed, an afterthought conceived in subtlety, but arising from an involuntary misconception. Whether such a mistake existed or not is, however, quite immaterial, as there was no charge except for disobedience of the written order.

Besides, General Porter could not have divined that in giving the order General Pope was influenced by an object the very opposite of that which was clearly stated and expressed. If the oral testimony was correct, the dispatch was most unwisely framed. It was actually misleading in its character and tendency. So great is the conflict between the written and oral evidence of General Pope's intent and object, that, if the dispatch had been lost or suppressed, there might have appeared to be some color for this charge. With that writing before the court, there being no pretense that the messenger communicated anything about the want of ammunition or the anticipation of an attack in the morning, the conclusion of the court seems unaccountable.

General Pope was ten miles off; the condition of Porter's corps as to marching capa-

city was quite unknown to him, and the order affirmatively indicated that nothing was designed but a general movement in the direction of Bristoe Station for the purpose of pursuing an enemy *then* on a retreat. Under these circumstances it seems quite clear that General Porter acted judiciously in avoiding the exhaustion of his already fatigued corps by a night march. This, it could be perceived, would enable him to bring them to the point indicated without undue loss of time, refreshed by needful repose and in fit condition to march on still further, if required, in pursuit of the flying foe. His action was more conformable to the spirit, intent, and actual import of the whole order than if he had started at one o'clock, in literal compliance with its first sentence. According to very ample testimony, from sources entitled to the utmost confidence, he judiciously exercised, in conducting the required march, a discretion vested in him by military law; and on this charge he was manifestly entitled to an acquittal.

The Board then, at 6 o'clock, adjourned until to-morrow morning at 10 o'clock.

FORTY-FOURTH DAY.

WEST POINT, *January* 11, 1879—10 a. m.

The Board met pursuant to the foregoing order and adjournment.

Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. George W. Getty, U. S. A., and the Recorder; also, Fitz-John Porter, the petitioner, and the several gentlemen of counsel.

The reading of the minutes of the previous session was omitted, with the consent of the petitioner.

Mr. Choate resumed his argument on behalf of the petitioner, as follows:

Mr. Choate said: In reference to the subject of the state of public feeling at the time the prosecution of General Porter was initiated, and to the distress and excitement, especially of the authorities at Washington, where the public feeling culminated, I omitted to read a passage or two from the report of General Pope to the Committee on the Conduct of the War. I wish to read this morning from page 166 of that report, where he describes the origin of the complaints—I will not say the beginning of them, but where they take shape in official form, presented by the commanding-general of the Army of Virginia to the authorities at Washington. It is in a dispatch written by him on the 1st of September, at Centreville, and addressed to Major-General Halleck, General-in-Chief. He says:

I think it my duty to call your attention to the unsoldierly and dangerous conduct of many brigade and some division commanders of the forces sent here from the peninsula. Every word and act and intention is discouraging, and calculated to break down the spirits of the men and produce disaster. One commander of a corps, who was ordered to march from Manassas Junction to join me near Groveton, although he was only five miles distant, failed to get up at all—worse still, fell back to Manassas without a fight, and in plain hearing, at less than three miles distance, of a furious battle which raged all day. It was only in consequence of peremptory orders that he joined me next day; one of his brigades, the brigadier-general of which professed to be looking for his division, absolutely remained all day at Centreville, in plain view of the battle, and made no attempt to join. What renders the whole matter worse, these are both officers of the Regular Army, who do not hold back from ignorance or fear. Their constant talk, indulged in publicly and in promiscuous company, is that the Army of the Potomac will not fight; that they are demoralized by withdrawal from the peninsula, &c. When such example is set by officers of high rank, the influence is very bad among those in subordinate stations. You have hardly an idea of the demoralization among officers of high rank in the Potomac army, arising in all instances from personal feeling in relation to changes of commander-in-chief and others. These men are mere tools or parasites, but their example is producing and must necessarily produce very disastrous results. You should know these things, as you alone can stop it. Its source is beyond my reach, though its effects are very

perceptible and very dangerous. I am endeavoring to do all I can, and will most assuredly put them where they shall fight or run away.

Now, to see what effect these words had (and by and by we shall be able to judge what measure of truth there was in them), the effect appears in the same report at page 189:

I made my personal camp at Ball's Cross-Roads, and on the morning of the 3d of September repaired to Washington, with a few officers of my staff, and reported in person to the General-in-Chief, the Secretary of War, and the President. Each one of these high functionaries received me with great cordiality, and expressed in the most decided manner his appreciation of my services, and of the conduct of my military operations throughout.

Great indignation was expressed at the treacherous and unfaithful conduct of officers of high rank who were directly or indirectly connected with these operations, and so decided was this feeling, and so determined the purpose to execute justice upon them, that I was urged to furnish for use to the government, immediately, a brief official report of the campaign. So anxious were the authorities that this report should be in their possession at once, that General Halleck urged me to remain that day in Washington to make it out. I told him that my papers, dispatches, &c., were at my camp, near Ball's Cross Roads, and that I could not well make a report without having them by me. He still urged me to remain with great persistence, but I finally returned to my camp, and proceeded to make out my report. The next day it was delivered to General Halleck, but by that time influences of questionable character, and transactions of most unquestionable impropriety which were well known at the time, had entirely changed the purposes of the authorities. It is not necessary, and perhaps would scarcely be in place, for me to recount these things here, and I shall therefore only speak of results which followed. The first result was that my report, so urgently demanded the day before in order that the facts might at once be laid before the country and made the basis of such action as justice demanded, it was resolved to suppress. The reason for this change of purpose was sufficiently apparent. The influences and transactions to which I refer seemed to the authorities to make it essential to the temporary interests of the government that General McClellan should be reassigned to the command, and, as a result, that the bad faith and bad conduct which the government was so anxious the day before to expose should at least for the present, be overlooked.

Here we have it clearly stated and confessed by General Pope himself that the alarm and distrust which his dispatch of September 1, from Centreville, excited in the mind of the government at alleged treachery and infidelity among the generals of the Army of the Potomac led directly to the avowed purpose of executing justice upon them, or, at least, as the event showed, of finding a victim among them, and that it was to reports and information to be furnished in hot haste by General Pope, the author of the charges, that they looked for material upon which to base and conduct a prosecution. If General Porter was really innocent, and if those were the motives in which his prosecution originated, and which sustained and carried it through to the end, then we are not without proof upon the record of the truth of what has been so often observed, that General Porter stands in the position of a scapegoat for the calamities that had overwhelmed the people, and the transgressions which had been committed, or which were supposed to have been committed, not by him, but by others. And that that matter may be tested, I have looked into the original authority, to see what the real character of the scape-goat was; and for that purpose I beg leave to read three or four verses from the sixteenth chapter of Leviticus, where the matter is fully set forth:

And Aaron shall cast lots upon the two goats; one lot for the Lord, and the other lot for the scapegoat.

And Aaron shall bring the goat upon which the Lord's lot fell, and offer him for a sin offering.

But the goat, on which the lot fell to be the scapegoat, shall be presented alive—

Which may account for the failure of the court-martial to sentence him to be shot—

before the Lord, to make an atonement with him, *and to let him go for a scapegoat into the wilderness.*

And Aaron shall lay both his hands upon the head of the live goat, *and confess over him all the iniquities of the children of Israel, and all their transgressions in all their sins, putting them upon the head of the goat, and shall send him away by the hand of a fit man into the wilderness.*

And the goat shall bear upon him all their iniquities unto a land not inhabited: and he shall let go the goat in the wilderness.

And he that let go the goat for the scapegoat shall wash his clothes, and bathe his flesh in water, *and afterward come into the camp.*

Now, who is the Aaron of this dramatic performance may easily be conjectured; and how can there be much more doubt as to who fills the rôle of the man who let go the goat for the scapegoat out into the wilderness, for it was he *who thereby secured the washing of his own hands, and returned into the camp, by which I understand that he continued in the military service of the United States.*

OPERATIONS OF AUGUST 29.

Now we reach the matters of the 29th of August, which I shall endeavor to dispose of as briefly as possible.

The situation on the morning of the 29th of August is best displayed by the dispatches of General Pope, and whatever we can extract from those certainly the Recorder will not object to. The movement of that day originated with a dispatch from General Pope, at a very early hour in the morning, an hour which he is fond of describing as the earliest blush of dawn—3 a. m. The situation then was that General Porter was at Bristoe with his corps, where he had been directed the day before to wait and rest his troops, their fatigued condition being recognized by the general in command. General Pope had gone on expecting to concentrate his forces, as I understand, at Centreville, behind Bull Run, excepting those which, as he then thought, lay between General Jackson and Thoroughfare Gap, consisting of McDowell's and Sigel's troops. He was of the belief that, if he had a fight, it should be, certainly, somewhere between Gainesville and Centreville; and I think the dispatches will show you that he expected to have this fight behind Bull Run. Now, quite a contest has been made here as to whether General McDowell disclosed to General Porter that that was the original purpose that morning of the commander-in-chief, or whether that had been his view on the previous day. But if the dispatches of General Pope show you that he expected the fight to be at Centreville, which is behind Bull Run, all that controversy falls out of the case. He sends, at three o'clock in the morning, from his headquarters near Bull Run, this dispatch to General Porter:

General McDowell has intercepted the retreat of Jackson; Sigel is immediately on the right of McDowell.

He was in entire unconsciousness of the retreat of McDowell's force from behind Jackson, although it had then actually taken place two hours before.

Kearney and Hooker march to attack the enemy's rear at early dawn; Major-General Pope directs you to move *upon Centreville* at the first dawn of day with your whole command, leaving your trains to follow. It is very important that you should be here at a very early hour in the morning. *A severe engagement is likely to take place—*

[That is, of course, at Centreville—]

and your presence is necessary.

The Recorder has laid great stress upon this statement in the dispatch, that a severe engagement is likely to take place, and that General Porter's presence was necessary. So do I. But in a different direction, I

call it to the attention of the Board, as declaring as emphatically as words could declare that he expected Porter to be then at Centerville, for the purpose of taking part in an engagement to be had there. That was, undoubtedly, his expectation. The heights of Centreville was the place where he might hope, if he could find Jackson there, for a successful engagement, as Jackson had McDowell and Ricketts behind him. It so happened, however, that at midnight of the previous day, the whole groundwork of the movement contemplated by this dispatch, without his knowing it, had fallen out; instead of McDowell having intercepted the retreat of Jackson, that had failed, and his force, as I have said, and as it has been so often said, had moved away, leaving the way open behind Jackson, at a time, too, when everybody knows that the main army of Lee was pressing forward to join him, and was coming through Thoroughfare Gap. Now, the Board will observe that the suspicion had not yet reached General Pope, and no rumor had reached him, that McDowell was not, where this dispatch places him, behind Jackson, cutting him off from any relief from the west. General Porter proceeded with the execution of that order. He advanced from Bristoe as soon as could be done after the receipt of this order, in the direction of Centreville, and his force arrived at Manassas Junction, or Manassas Station, or a little beyond; and he, himself, reached Bull Run, or very near Bull Run, where it has been testified he found a messenger from General Pope that morning.

The Recorder has somewhat gratuitously, I think, indicated that there was some delay in the execution of this order on the part of General Porter. It does not seem to me so, and it is not worth while to discuss it. It has been ably and fully discussed by Mr. Maltby. I challenge a careful inspection of the record, to bear me out in the proposition that this order was faithfully carried out by General Porter to the best of his ability, and that he was making rapid headway to the point to which he was directed, to Centreville, there to take part in a severe engagement, expected by General Pope to take place, when the whole movement in that direction was counteracted by the receipt of the next dispatch, which turned him to the right about face to go back upon the road upon which he had come, and to proceed upon Gainesville—the explanation of this being, of course, that General Pope, in the mean time, between 3 a. m., when he wrote the dispatch which I have already read, and about eight or nine o'clock, when he wrote this next dispatch which I am about to read, had received news of the catastrophe which had taken place by the falling back of McDowell's force from behind Jackson. You will see that General Pope, in those six hours, had got from near Bull Run, where his headquarters were during the night and at 3 a. m., to Centreville, where this was written, probably at about eight o'clock—from eight to nine o'clock.

CENTREVILLE, *August 29th*, 1862.

Push forward with your corps and King's division, which you will take with you, upon Gainesville. I am following the enemy down the Warrenton turnpike. Be expeditious, or we shall lose much.

JOHN POPE,
Major-General Commanding.

Major-General FITZ-JOHN PORTER.

It is observable that in this order there is no mention of General McDowell. The first dispatch had stated that McDowell had intercepted the retreat of Jackson. This dispatch, giving a new direction to the movements of Porter's corps because of the departure of King's force from the turnpike, makes no reference to McDowell, or his great army corps, except what is implied in the order to Porter to take King's divi-

sion with him. Now, the first question is, what was the reason of that? The reason is manifest, in the conspicuous fact upon this record, that McDowell at that moment was lost—lost to the commanding general, lost to the Army, lost to all the world, and had been lost since four o'clock on the afternoon before; and it was necessary that King's division, which had fallen back in the immediate neighborhood of Manassas Junction where Porter was, should be put under competent command, and it was, therefore, placed under the command of General Porter. That being so is demonstrated by a map which I propose to offer as a part of my argument, showing the movements of McDowell personally from four o'clock on the afternoon of the 28th until midnight, or after midnight of the 28th, and where he was during that most important period, while his troops, in defiance of positive orders, were abandoning the very key of the Federal position and throwing away the only chance of the capture of Jackson. His testimony is that, before the fight, on the turnpike between King's division and Ewell's on the evening of the 28th, being evidently in a state of great anxiety in consequence of the situation, he went in search of General Pope, and he went for the reason that he was better informed as to the situation than General Pope, and that General Pope would be benefited by a little conversation with him. That, I believe, is his exact language. He started out at four o'clock from a place on the turnpike a little west of where the fight of the 28th was, and he made this remarkable ride which will rank in history with Sheridan's ride, although under different circumstances.

[The map was here explained to the Board, and will be found in the appendix as map F.]

Thus the temporary disappearance of General McDowell is the obvious reason for this order to put his troops under the command of General Porter.

Now, the immediate military object of this order is one upon which I take issue with the Recorder. The Recorder says that the intent was to get this force of King's division, which had retreated from the turnpike, increased by Porter's corps, to which it was now added, back to the very place of the battle of the night before between King and Ewell's force, which we will suppose to be Gibbon's woods, a very familiar ground to us now through the map, and on the pike just west of Groveton. Well, I do not know what military object there could have been in getting them back there, if he wished to retrieve the position that had been lost the night before by their retreat, because the enemy were then understood by everybody to be in possession of that battle-ground, from which our forces had retreated. No; the object of the order is evident to everybody. As has been asserted here, on our part, and as has always been asserted by General Porter—you will find it in his preliminary statement—it was to get this increased force back behind the rebel position, between them and Thoroughfare Gap, between them and, if possible, Gainesville, and at Gainesville, which was the commanding position of the whole situation. There has been an attempt made to show, by General Gibbon, that it was to put the increased force right back into Gibbon's woods; and you know that the whole argument of the Recorder on this point was that, when he got to Dawkins' Branch, Porter was pointed a way proceeding straight up to Gibbon's woods, and that he ought to have gone there. General Gibbon does not say any such thing. I desire to call the attention of the Board to exactly what he does say.

General Gibbon, on page 243 of the new record, says: He having been concerned in the retreat, and being desirous that the mischievous con-

sequences of it should be remedied, went early in the morning in search of General Pope:

Question. Describe what occurred at that interview.

Answer. I told him what had occurred the night before, and that the division had left the line of the Warrenton pike, and that I had ridden over and gave him the information, because the absence of troops from that point left the way open for Lee's army to join Jackson, and that I thought it was a matter of importance that he should have this information, inasmuch as I presumed if he had any troops to send out to that point, that he would dispatch them. After some little conversation, the particulars of which I do not recall, he turned to Colonel Ruggles, his adjutant-general, and directed him to write an order directing General Porter to move with his corps out on the Gainesville road, and take King's division with him, and gave it to me to let me carry it back to General Porter. The order was given. I was furnished with a fresh horse and started back. I rode rapidly as I could to Manassas Junction, and near the junction met General Porter, and delivered him the order.

Question. Before leaving the conversation with General Pope, do you recollect General Pope stating to you what he was doing in reference to this probable approach of the enemy through Thoroughfare Gap, with reference to the disposition of his troops? I wish you would try to recall what was said in that conversation. You informed him, as I understand, that your division, by leaving the Warrenton pike, had left the road open for Lee's army to get up and unite with Jackson. Now, what did General Pope say, if anything, in reference to the disposition he was making of his troops, or had made of them, with a view to prevent that?

Answer. General Pope did not seem to appreciate, I thought, the fact which I informed him of, that the absence of those troops from the Warrenton turnpike left the door open to Lee's army to come up. He said, "Why, we are pressing Jackson now!" I cannot pretend to repeat the words.

General Pope apparently failing fully to realize the effect of the falling back of King's division, and still hanging on to the idea that they were pressing Jackson in front.

As I say, General Pope did not seem to appreciate the importance of what I regarded as fatal; that is, the absence of troops from the Warrenton turnpike, between the detachment of Jackson and Lee's main army. To my mind, the fact that he was pressing Jackson from the east did not appear conclusive at all that he could ruin Jackson simply because he was pressing him back to Lee's main army.

That is important in two aspects. It shows that General Pope understood perfectly well that it was not any small detachment of the rebel force that was pressing through Thoroughfare Gap to relieve Jackson, but that it was the main army of Lee, from which Jackson's force was a detachment. General Porter received this order at Manassas Station, or thereabouts, and just then, singularly enough, General McDowell appears. Well, what was the situation? It has been claimed that they fell under that article of war which provides that where forces under different commanders are united upon a march, accidentally or otherwise, the senior in rank takes command. That was not the situation. General McDowell had no troops. King's division, which was the only one of his corps that was then there, had been given to Porter, and he, under his responsibility, as corps commander had been compelled to take command of it with his own. The conduct of both generals shows perfectly well that that was recognized, although I know that General McDowell has intimated an opinion that he did have command or might have commanded. Not so. Because, if he claimed command, why did he not lead the column? Why did he ask Porter, as a favor, that he would put King on his right in forming his line, so that he could have him when General Pope said so? Why did he linger behind at Manassas Station when there was this important order, important upon its face, to move on Gainesville and be expeditious or they would lose much—why did he linger at Manassas Junction? That is fully explained from his own testimony, and from Pope's testimony, namely, that he was impressed with his situation and fully realized it; that while he might

be senior in rank to General Porter, yet King's division had been taken from him and turned over to Porter, just as these important movements were taking place. How distasteful this was to McDowell and how embarrassing to Porter appears from their interview near Manassas Station. You can conceive how awkward and trying it was to both of them: under what restraint it necessarily placed both of them; how embarrassing to McDowell; and how ten times more so to General Porter. Well, General McDowell, to cure that, writes his note to General Pope, protesting against King's division being taken from him, and asking that it might be restored; and then from that follows the joint order, the violation of which is the subject now under consideration.

THE JOINT ORDER TO M'DOWELL AND PORTER.

HEADQUARTERS ARMY OF VIRGINIA,
Centreville, August 29, 1862.

You will please move forward with your joint commands towards Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on Warrenton turnpike, and must now be not far from Gainesville. I desire that as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run, at Centreville, to-night. I presume it will be so on account of our supplies. I have sent no orders, of any description, to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his aide-de-camp, last night, which were to hold his position on the Warrenton pike until the troops from here should fall on the enemy's flank and rear. I do not even know Ricketts' position, as I have not been able to find out where General McDowell was, until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts, and instruct him to join the other divisions of his corps, as soon as practicable. If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out. One thing must be held in view, that the troops must occupy a position from which they can reach Bull Run to-night, or by morning. The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night, or the next day. My own headquarters will, for the present, be with Heintzelman's corps, or at this place.

JOHN POPE,
Major-General Commanding.

Generals MCDOWELL and PORTER.

This joint order was not received until General Porter had reached the front at Dawkins' Branch, and the messenger who brought it, Dr. Abbott, declared that, bringing duplicates of it, which he took from General Pope about ten o'clock in the morning, he found General McDowell somewhere between Manassas Junction and Dawkins' Branch, and delivered him his copy and then rode rapidly on to Porter, found him at the head of the column at Dawkins' Branch and gave him his copy. They were about a mile apart. That would very nearly account for the situation, because General McDowell says that at that time, at least, a full brigade of King's division marching behind Porter's had passed Bethlehem church and had got out, as I understand it, very near the Five Forks road, which the Recorder has now made the wonderful discovery was a road which somebody ought to have taken. Now, when General McDowell and General Porter were together near Manassas Station, and had this unpleasant talk—of course, it must have been unpleasant to both of them; nothing could have been more disagreeable—General McDowell then declared his willingness to recognize the situation, stating that King's division had been taken from him and given to General Porter, and expressed the wish that Porter, when he formed his line of battle, would place King's division upon the right of him, so that it would connect with his own force, which was understood to be

south of the Warrenton pike, or up at the Warrenton pike in the neighborhood of Groveton. Now, when General McDowell gets his copy of the joint order he rides immediately forward, as he says, and overtakes General Porter. How soon he reached Porter, after the joint order reached Porter, you can imagine, because the messenger was only a mile away, and he followed the messenger, and must have reached General Porter almost immediately with the joint order.

Before considering the question of the joint order, and as there is no fault found with Porter's conduct up to the time, at any rate, of the receipt of that order, and as there has never been any complaint of his execution, so far as he could, of this previous order to push forward with his own force and King's division upon Gainesville, I want to call the attention of the Board to what he did under that order, before the receipt of the joint order, because it seems to me that is very important; it discloses to us the military situation at which he had arrived, and the animus which inspired him under that order, under his instructions to move upon Gainesville. Now, if Porter had any intention of holding back that day, it seems to me that is the time when he would have manifested it, is it not? But what happened? In the first place, it is necessary to understand the point at which he had arrived. General Warren has fully described to the court his knowledge of the situation, and the Board has knowledge of it, as depicted by the map, and this makes it unnecessary for me to describe the stronghold at Dawkins' Branch, which Porter had reached, or that other similar stronghold, on the other side of that branch, which was already in possession of the army of Longstreet. Beyond the valley was this other commanding situation, not unlike that at Dawkins' Branch, which he had already reached, and the bed of which stream was the dividing valley. To the right stretched the ravine, through which the stream continued, and an open space beyond that spread onward toward Groveton, fully commanded in all its parts by the batteries of Longstreet from the opposite stronghold which he occupied. Not all known to General Porter, of course, for he had never been there before, but sufficiently known, as a glance at the map will show, to enable him to realize the importance and strength of that position, which he had reached, and of the similar position in front of him, which the enemy already held. Then, it appears, they halted. Has that halt ever been complained of? Not in the least. McDowell says that "up to twelve o'clock"—which must have been from half an hour to an hour after the halt—"Porter's movements were unexceptionable." What kind of a halt was it? Was it ordered by General Porter? That does not appear. But the reason appears: it was that necessary, spontaneous, involuntary halt that any column of troops, I suppose, makes when they come into the actual presence of the enemy, placed in a position corresponding and opposite to that which they had themselves reached, and which, in this instance, was quite as inaccessible to Porter as Porter's own position on Dawkins' Branch was inaccessible, in a military point of view, to the enemy across the stream. Now, what does General Porter do? You will observe that there is a good deal of time from the arrival of General Porter at the head of his column at Dawkins' Branch—he was near the head of the column when it halted—there is a good deal of time between that and General McDowell's arrival, and the arrival of the joint order. He is not yet under the direction of the joint order. His direction was to move upon Gainesville by the order under which he was then acting. The road was the road to Gainesville. What did he do? He prepared, as I suppose any wise commander would, to move upon Gainesville, according to the

order—to continue to move upon Gainesville. He deployed his leading division, Morell's, on the right and left of the road; he had Sykes' division then drawn up in column behind Morell; he sent General Butterfield with his brigade across Dawkins' Branch, where this enemy was in sight upon the opposite hill; he sent out his line of skirmishers under Colonel Marshall. That was the situation when the joint order and General McDowell arrived.

Now, was that right? Did that show zeal and earnestness and skill on his part? It is for you to judge. General McDowell testifies emphatically that it was all right. Now, the issue between ourselves and the Recorder is right here; he says that without and independent of the joint order, Porter was under orders from McDowell; there, says the Recorder, was his mistake; that duty required him to march up this road, as he calls it, from Deats to Groveton, a road which is no road, a road which I think is a fiction of the Recorder's imagination. General Warren, when he went to make a map, found none there; I do not understand that the Recorder, when he went to make his personal inspection, found any road there; but somebody told him there had been a road there, so he marked it down upon his map. It is not at all material, as it seems to me, for the deciding of this issue, whether there was a road there or not. If there was no enemy opposite, the country was all one road, for all the way to Gibbon's wood was open, and this resort to an imaginary road is wholly unnecessary; but on the other hand, if there was an enemy in force upon the opposite rise of ground, then it does not matter, I suppose, whether there is or ever was a road there or not. If there was a road, we suppose they could not march by the flank exposed to this enemy in force upon the opposite rise. On that matter the testimony of General Warren as to what was the proper mode, supposing that a military commander arrived with a corps at Dawkins' Branch, in that situation, finding a force upon the opposite rise of ground, knowing from the cannonading at Groveton that something of a hostile character was going on there, as to what was the proper mode if he wished to make a movement to the right, a movement to get over to Groveton to take part in what was then going on—how he was to do it—that testimony was so important that I beg now to call it to the attention of the Board. It is a long while since it was taken, but it explains the situation very exactly, and is found on page 43 of the record. He is being carefully examined by the president of the Board:

Question. What is the distance, measured along the ridge occupied by Morell, from the wagon-road to the railroad?

Answer. A little over half a mile.

Question. Along the same general line from the railroad to the wagon-road above; what is the name of that road?

Answer. The Warrenton and Alexandria road. That would be a little more than three-quarters of a mile.

Question. Bearing a little more to the north, keeping the military position from Morell's right, following along the edge of the woods to the north?

Answer. About three-quarters of a mile. This ridge (on Dawkins' Branch) continues along till about this place (James Nickerson's) facing this valley. Then these little ridges run on in this direction (Five Forks).

Question. If you turn to the north, would there be any position along there from Morell's right?

Answer. There would be no good position anywhere in that direction, until this road was obtained (the old Warrenton, Alexandria, and Washington road).

Question. The natural position then would be around here if you had to lay a defensive line? (Around and behind Five Forks.)

Answer. If I had to hold Porter's position permanently, with time to prepare to do so, I should have let the left rest where his was, extend along the ridge to the right to about the railroad, then take the highest line to the east and rest the right on Mount Pone; then I would slash all the timber in front of my line for at least half a mile.

That was something, I suppose, not to be thought of by one who was ordered to move towards Gainesville.

Question. What is the character of this country between the forest and the Sudley Spring road?

Answer. Farming country; descending very considerably towards the southeast.

Question. Could a column of troops with artillery move through there?

Answer. Yes; but they would have to make crossings for streams and little ditches and things of that kind.

Question. Indicate on the map, for present information, where Reynolds was on the 29th, if you have such information.

Answer. I have not it very definite, but it was somewhere in these woods (between Chinn's and Groveton).

Question. Can you give the general direction of his line on that day?

Answer. If he had met the skirmish line, the advance line of Jackson, early in the day, his line would face north; if late in the day he had seen the approach of Longstreet, he probably would have faced westward.

Question. About how far from Groveton was his left?

Answer. That I cannot say; I cannot say where his left or right was, or where he faced.

Question. Give us now the distance from Groveton, the shortest line, where Compton lane strikes the old Warrenton road?

Answer. About a mile and a half. This map will enable you to see very easily what roads the Army used independent of these routes. There were no fences then, or if there were, armies disregarded them.

Question. Give the distance from the junction of the Gainesville road with the Sudley road to New Market, and thence to Compton's house?

Answer. Three miles to New Market, or a little over; to Compton's lane, a little over four miles.

Now, here is the important part:

Question. What is the nature of this position with respect to an advance of an enemy from the west (pointing to the Compton house); I do not mean that exact point, but this general position between the headwaters of Dawkins' Branch and of Young's Branch?

Answer. You have got to suppose the position of the enemy. Suppose the advance is from the west, on the old Warrenton and Alexandria road—there really is no good line. This would be the line on the ridge between Chinn's Branch and Holkum Branch, but it would place both flanks into the woods, and render them liable to be got around by the enemy without his being seen. In the woods the flanks would have no effective fire. The natural position to resist an advance from the west is here (parallel to the Sudley Springs road, between Wheeler's and Dogan's); not a very good position either.

Question. Not a good position anywhere there?

Answer. No, sir; but that is the one that we held finally, and that we held on the night of the 30th.

Question. Is *this* ground here, generally speaking, commanded by this?

Answer. The most prominent ridge runs this way (from east to west, from Britt's to Compton's). If you form a line *here*, the enemy coming from the west could flank readily at Britt's. It is pretty nearly the same level. It is a high ridge and *this* ridge east of Carraco's is high.

* * * * * * *

Question. I understood this railroad (Manassas Gap Railroad) is such that infantry could move along in column?

Answer. Yes, sir; rather by the flank than column.

Question. Could they deploy along Dawkins' Branch here by the road from the woods?

Answer. Yes; I think they might.

Question. Could they see the valley in front of them some hundreds of yards?

Answer. O, yes; they could see part of it, and all of the cleared places here (on the southwest side of the high ridge which lies southeast of Carraco's).

Question. The only difficulty across here would be the occupation of these heights by the enemy, as I understand?

Answer. Yes; that would be the greatest difficulty.

Question. If you were forced to connect this point where General Porter advanced with some military position in the vicinity of Groveton, what point would you first occupy? What would you regard as the key of that position to be first occupied, being compelled by the situation of the army to hold this point or some point near Groveton? Could you get to that place more quickly by coming this way (around by the Sudley road), taking into account the uncertainty as to what might be in your front?

Answer. That, of course, would be a problem I cannot answer. I know very well—

take the case as it stood—that a movement made direct from Porter's position toward Groveton on that day would probably have brought on a general battle there. Of course, this occupation of this ridge, either at Britt's or Compton's, would only have been possible on the supposition that we whipped the enemy.

Question. Knowing that part of your army was near Groveton and you arrived *here*, at Porter's position, with the head of your column, what was the first move to make to secure the position of the whole army?

Answer. I should have withdrawn the whole army to the east of Bull Run.

Question. Suppose you had not the power to do that. Suppose your force *here*, where General Porter was, was ordered to connect with the other troops, what would you have to do to accomplish that?

Answer. I should think I had a very desperate thing to do.

Question. Suppose you had 30,000 men, and formed yourself with the head of your column on this road to Gainesville, and information that 30,000 other men of your own army were *here* (east of Groveton) and you were ordered to connect with them so as to form a continuous line of battle?

Answer. If I had an enemy in here, on the northwest side of Dawkins' Branch, I should have moved against him to see what he had (toward Vessel's). I don't suppose that I would be compelled to risk my 30,000 men to save the other 30,000; the risk would have to be equally divided and not to risk the destruction of this to save that which could, without danger, be drawn to a safe place, but I should have certainly wanted to see what was the force of the enemy in my immediate vicinity before exposing my flank to his line of battle.

Question. Considering the general extent of this position, as you now know it, how many troops would you want to make that attack?

Answer. I should feel that reasonably I ought to have a force here superior to the enemy.

Question. About what force of the enemy would occupy this position, as you now know it?

(Vessel's toward Carraco and Lewis.)

Answer. As I now know it, I now know that all the forces from Groveton could have been brought up, which probably would have been 30,000 men; that an encounter here in the woods would not have been successful unless we could have been able to whip 30,000 men.

Question. You would not have felt at liberty to have made that attack with less than 30,000?

Answer. No; not to engage seriously. At any time that you like you can feel the enemy with a force that you cannot afford to spare.

Question. In the case supposed, would not you have taken this course and keep control of this ground rather than by attempting to force the enemy's position; you have here a ridge of high ground separating the waters of Dawkins' Branch from the waters of Young's Branch. To fight a battle in as unfavorable a position as that you must have control of that ground?

Answer. Yes, sir.

Question. Then this position was a bad one to occupy?

Answer. It was a bad one to move from, but not a bad one to defend.

Question. If you had to fight a battle against an enemy occupying this general position, and difficult to attack with less than 30,000 men, would not you have moved to occupy this position, so as to hold command of the ground between the two positions you now occupy?

Answer. I don't think I would, because I think the enemy, seeing my object, would get there first. He would get command of that position before I could, in the position in which we were placed here.

Question. Suppose you were ordered to connect with the troops at Groveton, practically; you see no alternative but to move front and fight?

Answer. Yes; move to the front and attack.

Question. You think it would not be practicable to move a portion of your troops here and occupy this place (near Compton's)?

Answer. I wouldn't do it. I have seen such attempts made. A great deal depends upon who do it; what kind of troops you have. I hold it to be a general rule to never try to establish a line of battle that the enemy have any chance to get hold of before you do.

Question. Success, then, depends upon a question of time; whether you were there before the enemy?

Answer. Yes. Well, it comes under the general head of military principles never to establish your point of concentration inside of the enemy's line.

So he goes on further at greater length and to the same effect, that if he desired to move over to the right and occupy the ground which it is

claimed Porter should have occupied, the way to do it, in the eye of a military man, was to move over and feel and attack the enemy in front of you, clear them out from this rise of ground on the opposite side of Dawkins' Branch, advance over Stuart's Hill, about which so much has been said, and then you would be in a position to move upon Groveton. Now, we are obliged to rely upon the testimony of a skillful and accomplished officer, as to whose capacity there can be no question in a matter of engineering and military movements; and we are content to rely upon the testimony of General Warren in the obvious situation upon the stronghold that General Porter had arrived at, as demonstrating the entire propriety of his movements before the receipt of the joint order, and before the arrival of McDowell; and so clear is it, as we suppose, to military men that Porter's actual movements were dictated by the highest military intelligence and skill, that it is the reason why McDowell has always said that Porter committed no fault until after his own departure from the scene, and everybody connected with the case heretofore has admitted that that is so. But now, for the first time, the learned Recorder advances the theory that all this is wrong; that, independent of the joint order, independent of anything, independent of having that interview with McDowell, and especially after that interview, that it was Porter's duty to have marched to the right immediately on arrival at Dawkins' Branch, and to occupy the battle-ground of the night before, because the purpose of the order was to move to Gibbon's wood, the scene of the last night's fight. Now, the Recorder can fight a very good battle, if you get the enemy out of the way, I will agree. If there had been no enemy, any boy could have seen that when he got to Dawkins' Branch, if he was in sight of Groveton, and there was no enemy commanding the heights opposite, why, he could go to Groveton. The Recorder has gone to great effort to discover this road. Singularly enough, some kind individual, apparently not connected with this case, but a student of it, has made and circulated a map which, by a happy coincidence, exactly conforms to the Recorder's idea of the situation, and of what then should have been done.

The RECORDER. I should like to ask if that is in evidence?

Mr. CHOATE. No; I propose to ask to have it incorporated as a part of my argument.

The RECORDER. As an historical illustration?

Mr. CHOATE. As a geographical illustration. It is a singular piece of prophetic foresight in whoever prepared this map that he should so exactly have hit the views afterwards expressed by the learned Recorder. I suppose I can have it incorporated as a part of my argument, because it shows exactly the condition in which the learned Recorder's proposed movement would be a right one, and why it would not be exactly the wrong one, as demonstrated by General Warren. It was wholly unnecessary for the delineator of this map to lay out a broad army road from Deats' to Lewis Lane, through the valley of Dawkins' Branch, because on either condition it does not make any difference whether there was a road there or not. This road, known only to Lieutenant Brooke and the Recorder, occupies a very conspicuous position upon this map. Then, a very important condition, a necessary condition, is to get the troops out of the way from the field in front, from the high ground corresponding to Dawkins' Branch, across on the northwest side. That is most happily and successfully done by the projector of this map, by withdrawing the whole of Longstreet's force, after he had got in position, and we have proved that when Porter arrived at Dawkins' Branch he had substantially got in position—withdrawing all those forces in the rear of

Pageland Lane, and placing them exactly half way between Gainesville and Groveton, a most extraordinary thing to do with a rebel army under such an accomplished general as Lee, with such an aid as Longstreet, after they had been driving through Gainesville three or four hours before, at the top of their speed, for the purpose of re-enforcing Jackson at Groveton. Then another necessary part of the condition is to compress the rebel force into such a narrow place into the awkward position into which he has drawn them, or a very large part of them, up behind the rebel batteries that were posted between Jackson and Longstreet. What good any of them could do there it is impossible to see, because it is demonstrated by the evidence that that was very low ground, and they would have had to fire through several ridges in order to reach anybody anywhere. That is so happily in accordance with the views of the Recorder, that I shall ask to have it incorporated as illustrative of my argument.

[This map will be found in Appendix as Map G.]

THE RECEIPT OF JOINT ORDER AND M'DOWELL'S ARRIVAL.

Now, what happened when General McDowell came up? for that is one of the important questions. General McDowell, we have proved—and this he has not contradicted, although he says he doesn't recollect it—General McDowell rushes up with the joint order (which, of course, having been just received, is fresh in the minds of both and does not need much discussion); he comes quickly up, having now, however, accomplished a purpose which he had in view in writing to General Pope in the morning. He has the joint order which now, under the Articles of War, places him for the first time in command of all the forces. Porter now, and until they separate, is his mere lieutenant. What does he do? He rushes up and sees what is going on, does he not? He says so. *He says that the skirmishers were already engaged.* What does that mean? Engaged with whom? Why, engaged with the skirmishers of the rebel army on the opposite height. That he saw himself. He is informed that shots have been exchanged. What does he say? He says, "Porter, you are too far out; this is no place to fight a battle." What did he mean? Here we come first to the consideration of the joint order, as those generals considered it. Now, what was deemed too far out by that joint order? Why, there was this:

> One thing must be held in view, that the troops must occupy a position from which they can reach Bull Run by night or by morning. The indications are that the whole force of the enemy is moving in this direction, at a pace that will bring them here by to-morrow night or the next day.

Another passage which you will recollect is:

> It may be necessary to fall back behind Bull Run, at Centreville, to-night. I presume it will be so on account of our supplies.

Such was the situation. Here was Porter, a mere lieutenant to McDowell from the moment of the latter's arrival, after the receipt of the joint order.

We proved by five witnesses that McDowell gave him this order, "Porter, you are too far out; this is no place to fight a battle"—two of them new witnesses introduced upon this trial, in addition to those who testified before. Was it binding on Porter? Nobody questions. Was it given? Nobody can doubt it. Now, what was he to do? It thwarted his plan, which had been to feel and press the enemy, as he was already doing by Butterfield, and the express testimony is that he obeys the order and withdraws Butterfield, leaving his skirmish line out. Now,

what next happened? What was there in the joint order that they had to look to?

You will please move forward with your joint commands towards Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on the Warrenton turnpike, and must now be not far from Gainesville.

Let me pause there to ask the Board one question which I do not quite understand. This joint order was written by General Pope, at Centreville, at ten o'clock in the morning. Sigel, at least, under his directions, had commenced a severe skirmish with the enemy, on the turnpike, at six o'clock. Tell me, if you can, why no reference is made to that in this dispatch. This dispatch, as expressed, is an order of pursuit, and not an order of battle. Was it possible that General Pope, the responsible commander of all those forces, was ignorant, four hours after it had taken place, of an important skirmish between Sigel's force and Jackson's force at Groveton? Was it possible, that knowing it, he left it intentionally out of this dispatch, in so important a communication to McDowell and Porter? But he did leave it out. He does not indicate the least suspicion on his part that an immediate action is impending. He makes it an order of pursuit, as I think you will see.

I desire that as soon as communication is established between this force and your own, the whole command shall halt.

Halt with what view? The next word is:

It may be necessary to fall back behind Bull Run, at Centreville, to-night. I presume it will be so on account of our supplies.

Now, in respect to this order, if this was in the minds of both generals when General McDowell rode up, what did General McDowell mean by saying: "You are too far out; this is no place to fight a battle"? Did not he mean that the time had come, hearing this firing on the right, at Groveton, and knowing that there the Federal forces had probably stopped, did not he mean to indicate—was it not plain upon the face of the situation, without even this indication, that when he said "You are too far out," he meant that this was the time and the place to halt, according to the directions of the joint order? I suppose so. Then, what was the next thing? The next thing was to obey the joint order, unless they should see fit to vary in the exercise of that discretion which was now McDowell's direction in carrying it out.

As soon as communication is established between this force and your own, the whole command shall halt.

Well, communication was not established; but there was the place, according to General McDowell's indication, to make a communication—not connection. The word is not "connection," which I understand has a very different military significance from "communication"; but communication, at least, was possible. Now, what do they do? They proceeded through that unknown woods to a point down here [on the railroad, nearly half a mile east of Dawkins' Branch], to see what there was, and how it was practicable to make communication, the remaning duty enjoined by the joint order. They go over across the railroad on horseback, and come down and water their horses in this stream, which I do not consider must have been necessarily Dawkins' Branch, but some stream that ran into Dawkins' Branch.

Now, irrespective of the dispute which appears to be in the case, as to what orders General McDowell gave when he left, let us see what was determined at any rate, beyond all dispute. What were they there for? What could be the only object of their riding there? Of course to see

about this communication with Heintelzman, Sigel, and Reynolds, on the left of the Federal troops. They came back, didn't they? They found that that could not be done there, did they not, unless by this happy device of the Recorder, according to that map, which neither of them was soldier enough to think off? They found they could not do it. Now, it is suggested, and McDowell claims to have originated the idea, of his taking King's division around, which Porter testified in the McDowell court of inquiry, that he perhaps first suggested. When they met at Dawkins' Branch, is it difficult to see how it actually took place? There is no doubt that the request to put King on his right had been made in most urgent terms by General McDowell, aggrieved as he felt himself in the taking away of King's division at their unhappy conversation at Manassas Junction. Now, then, they come up to study this question of communication. McDowell has stopped Porter's advance. Porter says that he suggested it. Well, what does that mean? It was the suggestion of a lieutenant to his chief, was it not: a suggestion in deference to what had been said at Manassas Junction, before he had come under McDowell's command, was it not? And what did it amount to? Why—

> As you cannot get through here in the face of that enemy in front of us, it is possible to carry out your idea by taking King's division around by the Sudley road, and come up and make this communication.

At any rate, that was the plan which McDowell, under his then responsibility, conceived; and it was apparently concurred in by General Porter at the moment, for he says, in his answer to Secretary Chandler, which is harped upon here as a contradiction, that, when McDowell left him, he understood that that was his idea. I cannot see any contradiction between his various statements on the subject. I wish I had time to read them all, and show you that they are exactly alike, and consistent with his statement as made here, and with the proved position as we claim it. I speak apart from anything that was said or any orders given. It was determined by McDowell, whose responsibility it was to determine, to take King around by the Sudley road. What was that for? What must Porter have understood it to be for? Was it for General McDowell's troops to wander up the Sudley road to the turnpike? No; it was to make the communication required by the joint order, by going around the Sudley road, and coming in on the ground between him and Reynolds. Is there any question, then, that communication would have been established as required by the joint order? Is there in the least a question that it never was established? Whose fault was it? Was it Porter's? Is not McDowell and his force the missing link throughout this day? There is a map here, as I have stated, as to what they did; and General McDowell did not come in and make a connection or communication. Was Porter to do it? Should they both do it? General McDowell left him there and went around by the Sudley Springs road to make the connection which the joint order required. It would have been a very stupid violation of the understanding if, while McDowell was going around, Porter had gone over and occupied the ground to which McDowell had agreed to go, would it not? So I say that Porter's conduct is justified without any reference to any dispute that there may be about what was said.

Let us see what became of McDowell's troops.

Now, I introduce a map, which I ask to have incorporated as part of my argument, to show where General McDowell went, upon the evidence, as I understand it. Here [along Dawkins' Branch, and on Manassas—Gainesville road] is Porter's force; here, substantially in the same posi-

tion, is where McDowell left him; here [the prolongation north of Porter's line] is where the connection was to be made, somewhere in a direct line from here to the federal force at Groveton. Now, did General McDowell ever come there? Here [just east of the Chinn house, on and near the Sudley Springs road] is King's division at six o'clock. There is not the least symptom of any attempt by McDowell to occupy that ground; Porter was abandoned by him here, and if it was the understanding that McDowell should make the connection, or form on the left of Reynolds, that understanding was never carried out. [This map will be found in Appendix as Map E.]

I desire now to call your attention to what was done under the joint order by General McDowell. One thing he certainly did do; he observed the precaution; he held it in view, that his part of the troops should occupy a position from which they could reach Bull Run that night. General Patrick, at pages 189 and 190 of the new record, states what was done. Let us see whether General McDowell carried out his purpose of making that connection. General Patrick was one of General McDowell's brigade commanders; he describes the march; he describes the orders. Now, I do not care whether it was McDowell's responsibility or Pope's responsibility; Pope was fighting that battle, and the responsibility lay between them for the movement of McDowell's forces after they got up on to the Sudley road; certainly not on General Porter.

While I had been at Bethlehem church, and in the interim between the time I had left Manassas, and this time I had struck the Sudley Springs road, the other brigades of the division, under General Hatch, had moved on up the Sudley Springs road on the pike, so I was now in the rear instead of leading. They came up in this neighborhood, not very far from Conrad's, although I don't recollect the house. He left me after striking the Sudley Springs road, as near as I can recollect, near Conrad's, and was gone a little while, and came back, and then left again.

Question. Did McDowell give you any order there?

Answer. He left me here and told me to take this position on the road and to the left of it, I think. I was subsequently moved by General Hatch somewhere up near this road that runs to Chinn's house from the Sudley Springs road; it was under the cover of a wood.

Question. How far from the Sudley Springs road?

Answer. Close by, a little off to the left, a hundred or two hundred yards; that was my second position. The first assignment was by General McDowell, and the second by General Hatch. I was then moved, but by whose order I don't now recollect, in past the shoulder of this wood to the east of the Chinn house. I think that must have been by McDowell, to be near to support the Pennsylvania Reserve that were up here in this wood northwest of the Chinn house. All this time I was here, there was artillery firing going on, over along in this direction [north of the pike]. Apparently I could see from certain points what I afterwards learned to be the Dogan house. And in that neighborhood and along here there was firing. I saw the smoke and heard the discharges. In here [woods south of Young's Branch] I should say that at that time there was rather more wood and undergrowth and brush near this creek [Young's Branch] than is represented on the map, but I could not say. I was then ordered by a staff-officer of General Pope, I don't recollect who—a mounted staff-officer came up to me and said, "General Pope directs you to take your command down directly across to the pike in the neighborhood of that crest where Sigel is at work."

Question. Down by the Sudley Springs road?

Answer. No. Go right down across; and, particularly in the exhausted condition of the men, it was a very hard march to get down through there. We had reached this stream, Young's Branch, and part over it. I suppose that we were about two-thirds of the way to three-fourths, when a staff-officer of General McDowell——

Question. This is the fifth order that you got?

Answer. Well, I don't know—directed me to return instantly to my former position, with some other instructions as to supporting Reynolds, and pushing in nearer to him farther into the west. I came back towards the Chinn house, but farther than I had been when I went in; I cannot tell exactly where I was. I saw Reynolds before I left and had some conversation with him.

Question. Can you locate where you had that conversation with Reynolds and what he was doing?

Answer. It was in this neighborhood [south of Young's Branch and northwest of the China house], just beyond the point where the wood-road crosses the arrow line. There was skirmishing going on in there.

Question. You got your brigade there, did you?

Answer. Yes.

Either the making of communication by the plan that McDowell agreed upon was impossible, or if possible, he did not accomplish it. Either alternative is equally satisfactory to us on behalf of General Porter.

DISOBEDIENCE OF THE JOINT ORDER.

Now, we come to this question of the disobedience of the joint order. As I understand this joint order, it does not direct an attack, it directs a pursuit. But, of course, the Recorder says that you cannot say it does not contemplate an attack. Any movement in pursuit of a flying enemy contemplates the possibility of an attack. But the not making an attack is not a disobedience to the joint order; that is a disobedience to the military rules that control the situation. How was it in this case? It has never been claimed by anybody, by General McDowell, or General Pope, or by Judge-Advocate Holt, or by the Recorder, that the joint order, taken by itself, was disobeyed. Not a bit of it. What is the claim? Why, that the joint order as modified by General McDowell was disobeyed, asserting the right of McDowell on leaving Porter to modify it. So the Judge-Advocate, and General Pope, and General McDowell say that a violation of the joint order was committed; a violation of the joint order, as modified by McDowell, because General McDowell directed him to make an attack. Now, what does the learned Recorder say? He says that Porter violated the joint order as modified by McDowell, not because he did not make an attack; he should not have made an attack, says the Recorder. That was an unmilitary movement; it was contrary to the recognized principles of warfare—but he violated the joint order, as modified by McDowell, because, when he got to Dawkins' Branch, he did not wheel around and march up to the right, straight to the front of the enemy at Groveton. General McDowell, at Governor's Island, protested against being defended by the Recorder. I see now, perhaps, what he meant, although I do not believe the Recorder then disclosed this view. It is a complete going back upon all of my learned friend's antecedents. Nobody heretofore has suggested this view; and as I said at the beginning of my argument, if we are to take him as the authoritative mouth-piece of this prosecution on this important part of the case, we need not consider it any further. For, he now asserts that McDowell was all wrong; that General Pope did not know anything about it; that the Judge-Advocate-General was entirely in the clouds, and that Porter's error, joint order or no joint order, and particularly under the order of General McDowell, ordering him to go to the right, was in sending Butterfield across, in pressing the enemy upon the other side of Dawkins' Branch, that he should have marched up to the right—they said that he should have attacked, and attacked more vigorously. Well, I must leave them to settle their hash between themselves: I certainly cannot solve that problem.

Now, I fall back briefly upon the consideration of the case as it stands. We must either leave McDowell out or the Recorder out; and it does seem to me that his presentation of the case disposes of itself. Now, I propose to leave him out, and consider a little further the case as made without him. Now, how is it? Here is a case presenting this remarkable situation. I did intend to read what Generals Pope and McDowell

said on that subject. I think I will briefly call your attention to that, because it bears on the question of the construction of the joint order. Was it, as the Recorder now claims, to go right up to the battle-field of the night before, or get in behind that battle-field and reach Gainesville? General Pope, at page 14 of the General Court-Martial Record, says (I think it is refreshing after the views that have been presented, to go back to what he and McDowell said on the former trial):

I then sent a joint order to Generals Porter and McDowell, directed to them at Manassas Junction, specifying, in detail, the movement that I wished to be made by the troops under their command—the withdrawal of King's division, of McDowell's corps, which, during the greater part of the night, I had understood to be on the Warrenton turnpike, and west of the troops under Jackson. Their withdrawal to Manassas Junction, I feared, had left open Jackson's retreat in the direction of Thoroughfare Gap, to which point the main portion of the army of Lee was then tending, to reinforce him. I did not desire to pursue Jackson beyond the town of Gainesville, as we could not have done so on account of the want of supplies—rations for the men and forage for the horses. My order to Generals Porter and McDowell is, therefore, worded that they shall pursue the route to Gainesville, until they effect a junction with the forces that are marching upon Gainesville from Centreville—the forces under Heintzelman, Sigel, and Reno; and that when that junction was formed (as I expected it would have been very near to Gainesville), the whole command should halt, it being, as I stated before, not feasible with my command in the condition it was in, on account of supplies, to pursue Jackson's forces further.

Then at page 30 General Pope further says—now, here is a pretty good answer to the Recorder:

Question. Will you state on what road you intended General Porter should march to Gainesville, in the execution of your written order, referred to in the joint order of the 29th of August?

Answer. I intended him to march on the direct road from Manassas Junction to Gainesville.

Question. Would that road have brought the accused and his command to the battle-field at Groveton?

Now, my learned friend insisted that you should construe the joint order so that it would have brought them on to the battle-field at Groveton. Then at page 33:

I knew the position of the enemy, who occupied a line perpendicular to the Warrenton turnpike, and at or near the town of Groveton; I was sure, from the orders I had given him, that General Porter must be somewhere between Manassas Junction and Gainesville on the road to Gainesville.

So that you see a departure from the road to Gainesville would have been a departure from General Pope's idea.

So far I knew, within certain limits, though not exactly, the relative positions of General Porter and of the enemy. My belief was that the road from Manassas Junction to Gainesville either passed by the right flank or was occupied by that flank of the enemy, and that Porter's march, if pursued, conducted him either to the right flank of the enemy or past the right flank of the enemy toward his rear.

But it is not necessary to occupy any further time in reading from the record about that, it is so clear what the understanding of Pope and McDowell was about it, that they were to move toward Gainesville and not in any other direction. This new figment of the imagination about turning off at Dawkins' Branch is to my mind a wild and delusive one. Now, how was it? If you cannot impute any violation of that joint order except as modified by McDowell, was there any modification of it? General Porter says there was, by General McDowell telling him to remain where he was. General McDowell says there was by his giving Porter an immediate order to make a vigorous attack upon the right flank of the enemy in front of him. Now, which is right? Did General McDowell give any such order as he claims to have done? He says he told him, "Put your troops in here"; but you will still recollect his

description of it, which has been brought to your attention by Mr. Bullitt—his interpretation of those words given on the former trial—when he is brought to the point of what he meant, saying: "I meant just what is stated in the 4.30 p. m. order." Well, there is no doubt about what that was, and what that order directed, because that is just what McDowell testified on the former trial that he meant to say, and did say by, "Put your troops in here." The 4.30 p. m. order says:

Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and if possible on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us.

Now, did General McDowell give any such order as that? We say he did not. He swore upon the former trial that he did. The case went against General Porter on the violation of this joint order upon the belief of the court-martial that General McDowell did give such an order. Now, did he do it? In the first place, let us see what the two generals knew on the subject of the force in front of them at that time. We have seen, up to the time of General McDowell's arriving, that General Porter was not very fully informed; he saw there was a force there, and he was proceeding to feel it and press it; he had taken a couple of scouts who said it was Longstreet's force, and that opened his eyes. What came with McDowell? McDowell brought a dispatch from Buford. What did that tell him? Why, if they were not fools, it told them everything; it told them that all of Longstreet's force was there. Because you will observe in what I have read from General Pope's testimony that he understood perfectly well that it was the main army of Lee that was pressing through Thoroughfare Gap to reinforce Jackson; no small detachment, no room for any quibbling about divisions or brigades, but it was the main army of Lee that was pressing through, and nobody knew it better than McDowell. Had he not been stationed in front of Lee on the Rappahannock when Jackson broke off from him? Do not his dispatches subsequently show that he knew well that what Lee was fearing was that he could not get through Thoroughfare Gap in time to relieve Jackson? That was obvious without any special information; it seems to me that the youngest lieutenant in the Army might have guessed it and ought necessarily to have inferred it. Now, the Recorder says that the captured scouts may have been two of Robertson's troopers, and that Robertson's troopers were not with Longstreet; they were with Jackson. Was that quite ingenuous? Did he suppose that he could mislead the minds of this Board by such a suggestion as that? What does this dispatch of Buford's say?

HEADQUARTERS CAVALRY BRIGADE, 9.30 A. M.

Seventeen regiments, one battery, five hundred cavalry, passed through Gainesville three-quarters of an hour ago, on the Centreville road. I think this division should join our forces now engaged at once.

Please forward this.

JOHN BUFORD,
Brig. General.

That was Buford who had been sent to keep watch of them. The Recorder has saved me the trouble of counting those troops. They were 14,100 men, he says—more than one-half of the main army of Lee that was pressing forward with all speed to relieve Jackson, as they all understood it. What had happened? Why, a quarter before nine, just about the time that General Porter received his order to reverse march at Manassas Junction, they had, what? Come through Thoroughfare Gap? No. Reached Gainesville? No; but *passed through* Gainesville—the main

army of Lee that was coming through Thoroughfare Gap, that was what had come. I do not mean the entire army that had come up from Richmond. I mean the main army; the portion that Jackson had left or broken himself off from, when he came through Thoroughfare Gap. Now, then, if they came to re-enforce Jackson post-haste and had passed through Gainesville, which is nearer to Dawkins' Branch by far—a little more than half as far as the distance from Manassas Junction to Dawkins' Branch—if those two generals were not fools, didn't they know who and what was in front of them? There were, at least, 14,100 men. I do not care whether they were at Stuart's Hill, or between there and the turnpike, or between there and this road; they were there; they commanded this position on the other side of Dawkins' Branch, which General Warren has described as a stronghold, corresponding to this stronghold on which Porter was. General McDowell disavowed knowing anything about Longstreet, and led the court-martial to believe that he did not believe they were there. But you must put yourselves in the places of Generals McDowell and Porter, when they read that dispatch of Buford on that ground, and found that those two scouts had reported Longstreet's men in front of them. What ought they to have understood? But we are not left to that. We are not left to any mere calculation, because McDowell himself says what he thought about it. At page 803 of the new record, it does seem to me this question is settled beyond all dispute. Here is the passage to which I call the attention of the Board:

Question. When you testified on the former trial of General Porter, were you of the belief that the force mentioned by General Buford's dispatch was the whole rebel force in front of General Porter that afternoon?

Answer. Did not I answer the question a little while ago?

Question. I now call your attention to later in the afternoon?

Answer. I left General Porter about noon. After that time I knew nothing of what occurred in his front.

Question. You knew of no increase of rebel force in his front?

Answer. I knew nothing of what occurred in his front.

Question. When you testified on the court-martial, it was with the belief that the rebel force in front of Porter all that afternoon was limited to the troops mentioned in Buford's dispatch?

Answer. I didn't say that.

Of course, we knew that he would not stultify himself by saying that, so we pressed the question.

Question. I ask you?

Answer. No; I don't. I say that was not a question that came up. I acted upon that thing up to twelve o'clock.

That is, on Buford's dispatch.

After I went away from there I had no further concern personally with that question. *I took it for granted that there would be other forces come up.*

Of course, they took it for granted. They were educated at West Point, were they not? They knew that here was an army of 25,000 men, more than half of which had passed through Gainesville at a quarter before nine, and the question was at twelve, where were they? Were those troops interfering with their progress? Longstreet was another name for the main army of Lee. How much was it? Fourteen thousand one hundred men certainly already there, and they took it for granted that the rest were coming. General McDowell says, "That under those circumstances he told General Porter to attack at once with his whole force." That he swore to on the former trial. Was he mistaken about it? May he have been mistaken about it? I will not reargue that question; it has been so fully argued by Mr. Bullitt. Of course, he was

mistaken. Of course, this lamentable result of the first trial upon General Porter came from that testimony.

On pages 802, 803 of the Board Record, General McDowell testifies as follows:

Question. Didn't you think that when you left him, he was left to the unrestrained operations of General Pope's joint order?

Answer. No, sir; as modified by me. It is for the Board to decide that question.

Question. Suppose that General Porter ascertained, after you left him, that the rebel force in front of him was twice what you had supposed it to be, and spoken of to him, and twice Porter's own force, do you think then that he should have made an attack?

Answer. I think he should have found out the force.

Question. You say he should have tested and found out the force?

Answer. I think so. That is a question for this Board.

Question. Now, having tested and found out a force quite as large as his own, do you think he should have attacked them?

Answer. He should have made some tentative operations. There are a number of ways of attacking; you attack headlong, or you skirmish, or you shell; but to do nothing whatever, certainly would not be complying with the order—to make no effort with the troops.

Question. Now, I ask you, if, after making efforts necessary for the purpose, he had ascertained there was a force there double his own after you left him and took King away, do you say that he should have attacked?

Answer. He should have made an attack; yes.

Question. He should have made an attack just as you ordered it?

Answer. My order was, I confess to you, a very vague one. It was made to a person whose zeal and activity and energy I had every knowledge of. I did not pretend to give him any particular instructions or directions that he should skirmish, or shell, or charge, or anything of that sort. I merely indicated the direction in which his troops should be applied. Further than that I did not think, and would not think now, if I had the thing to go over again, to direct.

Question. You did not construe it as an order given by you to an inferior general?

Answer. Certainly I did.

Question. What did you mean, then, by giving orders that were vague and amounted to nothing?

Answer. I did not say that.

Question. Well, gave orders of the kind you have described?

Answer. What orders?

Question. What did you mean by giving orders "vague" and merely an indication?

Answer. I meant just what I said, that General Porter commanded a corps. I did not tell him that he should deploy so many troops, or that he should put in so many skirmishers, or so many batteries, and do this, that, or the other. Those are questions of detail which, as an army corps commander, he was to carry out. All I did was to give line to his operations.

Question. You meant that with the indication you gave him, he should act on his own discretion?

Answer. Yes; but he should act.

Question. Now I come back to the question I put to you before. If, after acting, he ascertained the presence of a rebel force in front of him twice as great as his own, twice as great as you on leaving him had supposed it to be, he should have brought on a general fight with them?

Answer. He should not have brought on so general a fight as to have thrown the whole of his force headlong upon this supposed double force of the enemy.

And on pages 814, 815, he testifies:

Question. When you left him did you expect that within an hour he would be engaged with the enemy?

Answer. Yes, sir.

Question. Then you do not think it would have taken him an hour?

Answer. You just asked me that question—if I thought that within an hour he would be engaged with the enemy: I said yes, I thought he would.

Question. Short of an hour?

Answer. I did not say short of an hour.

Question. Well, that is what I understood by *within* an hour.

Answer. I say at the end of an hour, if you want to get at the exact time.

Question. Did not you expect by the end of that time to get your force well around and connect with Reynolds?

Answer. I hoped to do so.

Question. Then, as you left General Porter, I understand your plan was one of co-operation?

Answer. With him?

Question. With him and with Reynolds.

Answer. We were all co-operating to the same point.

Question. But you did not expect that he should become engaged with the enemy until you should get around to the left of Reynolds?

Answer. I did not make any such calculation; I have said nothing of the kind.

Question. You said something very near it; and I want to know whether that was your expectation—that he would be in a general engagement with the enemy before you got round on the left of Reynolds?

Answer. You want to make me say what he would be doing at a certain time, and where I should be; I say no such calculation entered into my mind.

Question. You said by the end of an hour you expected to be well around on the left of Reynolds with your troops?

Answer. No, sir; I did not say well around to the left of Reynolds.

Question. What did you say?

Answer. Well around.

Question. Well, around where?

Answer. In the direction where I was going.

Question. Around to the Sudley road, and on the left of the Sudley road, toward Reynolds?

Answer. I say you are putting that in.

Question. Well, the record will show what you did say. Did you intend that he should get into a general engagement with the enemy while you were removed from the scene back on the Sudley road, so as to be out of all possibility of rendering him immediate assistance?

Answer. I do not want that question put in that way.

Question. That is the one I want you to answer.

Answer. Because you are putting words in my mouth, and putting plans in my head which were not suggested there.

Question. Then you can merely say it was not the case.

Answer. *When I left General Porter, I left him a corps commander, for him to operate in the direction indicated. How quickly he was to get in an engagement, whether an hour or an hour and a half, and how he would do it, whether in one way or another. I did not indicate, nor did I take it into my mind; it was simply that he was to operate on the left, and necessarily, when he got over there, the nature of his operations would be determined by the condition of things that he would find. What those conditions would be I could not at that time tell.*

And on page 817 he testifies:

Question. Did you expect General Porter to engage the enemy alone, when along the rest of the line there was nothing but artillery engaged?

Answer. He would not be engaging the enemy alone if the rest of the line were engaged with artillery. You seem to think artillery is of no consequence.

Question. What kind of an engagement did you expect him to enter into while no other but artillery fighting was going on along the rest of the line?

Answer. As I have tried to make myself understood on several occasions, the nature of the particular kind of contest which he was to engage in was not a matter which I ventured to impose upon him. As a distinguished and zealous officer, with his corps under his command, I did not venture to do anything more than indicate the place where I thought he was to apply that force. Whether he was to skirmish or have a very deep line, or extended one, was a question which I did not go into at all, nor think of going into,

Question. Then a skirmish-line would have answered your expectation when you left General Porter if, in his discretion, that was more advisable?

Answer. It would depend upon the nature of the skirmish—how it was done; how vigorously carried out; whether the circumstances required it, and it only. It depends upon a great many things that you must make a great many suppositions about before I can give an intelligent answer. If you want to know a general principle, I believe it is laid down by military writers that a body of men should be in a condition to offer battle or decline it; whether the main body shall be advanced or retire on the reserve, and many other positions; all of which are conditions upon which battles are determined.

Question. And determined upon the discretion of the corps commander?

Answer. Yes; provided he acted energetically.

Question. Provided he acted according to the best of his discretion as a soldier?

Answer. Yes, sir.

I have thus shown that General McDowell was utterly reckless in his testimony, on the court-martial, producing a wholly false impression on which Porter was convicted, and which he has now been compelled to

retract and correct. On the court-martial, he swore that he left Porter with a positive order to attack at once. For not doing so, as ordered by him, General Porter was convicted and disgraced.

How far, and from what motives the error arose, it is not for me to say. There may be various explanations of it. I should think, perhaps, he might have been angry, so as to disturb his good judgment, but he denies that we have ever seen him angry. Perhaps he had the nightmare, as he says this campaign has been a nightmare to him from the time of its occurrence. I took occasion to see what effect that would have, and I find that it might disturb any man's judgment if it was operating upon him when he was testifying. A very recent scientific authority describes a nightmare as "a terrific dream, in which there appears to be a disagreeable object, as a person, an animal, or a goblin present, and often upon the breast or stomach of the sleeper, accompanied by an inability to cry out, or move or call for help." Well, something happened to destroy his judgment or his presence of mind, or his recollection upon the former trial, and he swore to that. Now, at Governor's Island he came and said that he meant no such thing as he had been understood to mean, and had sworn at the court-martial that he did mean—not that he did not use the words, "Put your troops in here," but that he didn't mean any such thing as was imputed to his language at the court-martial, but that all he meant was to do just what General Porter did do, act upon his discretion, feel the force of the enemy in front of him by a skirmish-line, if in his judgment that was the proper thing to do under the circumstances, and any other method that he, as a corps commander, left as sole master of the situation, might deem sufficient and proper. What we claim is that General Porter, acting under that discretion, did what he did, and that it was the best thing under the military circumstances to do. If it was left to his discretion the question is whether his discretion was exercised honestly and in good faith, and not whether it was the best thing that might have been done. McDowell comes to Governor's Island and says that he did not mean what was imputed to his language before, but that he did not think there could be much doubt about it, because when he said it he indicated by a gesture what he meant by "Put your troops in here." Now, his testimony on that subject is very remarkable. One would suppose that if he said "Put your troops in here," and indicated by a gesture, he would know where the gesture indicated. Now, here is the cross-examination on that subject:

Question. You are quite positive, I understand, as to your recollection of the exact words which you used to General Porter about putting in his troops, as you stated on page 85, "You put your force in here." Is it your recollection of those being the exact words?

Answer. Yes, sir.

Question. Was then and is now?

Answer. Yes, sir.

Question. Then you did not say "Put your troops in there"?

Answer. Is not that what you said?

Question. No: "Put your troops in here."

Answer. It was accompanied by a motion of the hand, here or there.

Question. I want to know whether it was *here* or *there?*

Answer. That I cannot tell you.

Question. Would it make a difference whether it was *here* or *there?*

Answer. No; one might be a little more critically correct as an expression, but "here or there" would have been understood.

Well, it would have been a very singular order for him to say to General Porter, "Put your troops in here or there."

Question. I look for your recollection of the real words, whether you said "Put your troops in here," or "Put your troops in there."

Answer. I could not tell you as to that.
Question. You say that here or there would make no difference?
Answer. No; in connection with the movement of the hand, as indicating the place
Question. Do you recollect the movement of your hand?
Answer. I cannot tell you whether it was the right hand or the left.
Question. Can you recollect which way you were facing?
Answer. No, sir.
Question. Can you recollect whether you moved your hand north, or south, or east, or west?
Answer. It was not in reference to the direction of the compass.
Question. No; can you recollect that fact?
Answer. I could not.

I do not think the order is helped out much by the gesture, and when you come to see that there was no order, but only a gesture, added to this wild and unintelligible "here" or "there," east, west, north, or south, it left General Porter in the position which I now will indicate.

General Porter swore before the McDowell court of inquiry, which I am much obliged to the Recorder for putting in evidence, that when McDowell left him he said no such thing as "Put your troops in here"; but that when Porter said, in view of this idea of taking King away, "What shall I do?" he, McDowell, said nothing, but waved his hand and rode off as fast as he could. Is there any corroborating testimony to that? Yes, Captain Montieth, aide-de-camp to General Porter, was present and heard the question and saw the wave of the hand, and saw the departure without an answer. Now, what? Why, General Porter was left there alone, down near the place where the horses were drinking, and he came back alone to his command. As he came back, he saw, as he swears before the McDowell court of inquiry, the enemy gathering in his front. He knew well enough what that meant, did he not? That those troops reported by Buford were there, and, as he thought then, coming down upon him. What was the natural movement? What was the natural suggestion? He had thought before McDowell arrived, and when he was in command of 17,000 men, 9,000 of his men and 8,000 of King's, which had been placed under his special command—he had thought the wise course was to press the enemy in front, and if possible, go over to attack him; but McDowell having now left him, without any answer even to his suggestion that now was a time when he might make a communication by taking King's division around on the Sudley Springs road; (these things shifted with every changing view from the enemy, did they not?) And, as he rode back, he saw the enemy gathering in his front, and he says: "Now, if ever, is the time to attack. Don't we know that the force reported by Buford is here—don't we take it for granted, as McDowell says, that all the rest are coming? Now or never is the time to attack!" What does he do? Why, he renews and continues his movement to press the enemy, and in that view pushes Morell over to the right beyond the railroad; he is preparing a new or a forward movement beyond Dawkins' Branch. Well, on what view was that possible? On what theory had it always been possible and practicable in his idea? Why, it was not with 9,000 men against from 14,000 to 25,000 over there, wherever they were. I don't care whether they were within a few rods of Dawkins' Branch, or anywhere that the Recorder pleases to put them. No; it was not with any such idea. It was, that with 17,000 men he might try it; and that was the only time, as it seems to me that military men will say, that an attack should have been tried. So, on the impulse of the soldier, knowing that there is a supporting force within reach of him, namely, King's division, he sends to King to hold on. What was that for? That he might press with Morell; that he might bring Sykes out here (in sup-

port), and make the movement described by Warren as the necessary movement and the only practicable one, with King's force to be held in reserve while Morell deployed, and to come up as he and Sykes advanced. Now, the learned Recorder sees fit to dispute that that took place. I never have seen how it can be disputed. I never could see how, at least, General Porter could help believing that it was so ordered by General McDowell, and acting on that belief. He sends General Locke after King's force. The answer comes back from McDowell in place of King—

Give my compliments to General Porter, and tell him to stay where he is; I am going to the right, and I will take King's division around with me.

Now, if that was the time to attack, who is responsible for its not having been done? Porter, who wanted to do it, Porter, who began to do it, or McDowell, who refused to join or support him?

And now I wish to call attention to the Recorder's imputations upon our evidence that what I have thus stated did really happen. McDowell said he didn't recollect it. That is all he said. General King said he didn't recollect it. Well, if it turns out that General King was not there, and that it was some other officer, there is pretty good reason for King not recollecting it, apart from the terrible illness under which he was suffering, which might naturally affect his memory, an illness which it is proven upon the record did overcome him, and from which he had been suffering and in a disabled condition for the whole of two weeks before. Well, but, says the Recorder, Porter knew that King had gone away, and, when Porter says that he sent Locke to King, he tells a falsehood. Now it would be something if Porter knew that King had gone. The Recorder has made the deliberate statement, with the intent that you should believe it, that this record shows, by the evidence of Patrick and Judson, that Porter knew that King had gone. I deny it. I say it does not show any such thing. At page 104 is the testimony of Judson, upon which he relies, which is this:

Question. What time did you reach that position (Bethlehem Church)?
Answer. I cannot state the hour; it was early in the morning of the 29th, I think.
Question. Then your division knew the way very well from Bethlehem Church to where the fighting was the night before?
Answer. Yes, sir.
Question. In the morning, were you still posted on that road when General Porter's division came along marching towards Gainesville?
Answer. We were.
Question. Did they come by you; the head of the column on the road?
Answer. My recollection is such.
Question. Was General Porter with them?
Answer. He was.
Question. Did you see him?
Answer. I saw him.
Question. Did you have any conversation with him?
Answer. I did.
Question. State that.
Answer. General Porter asked me where the commanding officer of these troops was.

Now this was a man in Hatch's brigade.

Answer. I conducted him to General Hatch.
Question. Had General McDowell at that time made his appearance?
Answer. I have no recollection of seeing General McDowell since the day before until that time.

Is that an indication even to Porter that probably King was not there? Not in the least; there is not a word of suggestion about King. Judson may have taken him to Hatch as the immediate commander of

the brigade, which he was, or King may have been temporarily away. There being no reference to King, how unfair it is to impute to Judson's testimony knowledge on Porter's part that King had gone. It does not help the matter any more to refer to General Patrick, at page 187, because it shows that, when Patrick says that King came up to say good-bye, Porter's column had already gone past.

I think General King was the first whom I saw. It was somewhere about eight or nine o'clock, while my commissariat and personal staff were hunting up supplies, &c. General King rode over to my headquarters, and told me that he was not fit to be in command, that he was going to Centreville, and came over to bid me good-bye. I think Colonel Chandler, his adjutant-general, and I do not recollect who else, were with him at the time; he came to say good-bye, and I do not know that I saw him after that.

Question. In the mean time had you found the promised supplies?

Answer. We got some somewhere.

Question. You found after a while the rest of the brigades of your division?

Answer. No; I have no personal recollection of seeing them there at all. I must, I think, have seen them or knew of their being thereabouts from some source.

Question. What happened next after King's departure for Centreville?

Answer. I was ordered, I think, by McDowell in person, to move as soon as I could in the rear of General Porter; Porter having just passed through, or passing through near Manassas Junction, to go back to the scene of our fight the night previous.

Clearly, when General King came there to bid General Patrick good-bye, Porter had already gone to the front. How puerile is it then to say that Porter must have known that King had gone, and therefore he could not have sent this message by Locke to King, when it appears that he was all day (and the government produces the dispatches) sending dispatches, not to McDowell and Hatch, but to McDowell and King. O, says the Recorder, those dispatches were properly described by a little word of three letters, seldom used among gentlemen and never among soldiers. Well, will that go down with the common sense which we claim for leading military minds? Of course not. This message was sent by Locke to McDowell, and this was the answer; and, mind you, it corresponds in substance with what McDowell said at Governor's Island, that he meant by "put your troops in here," "I meant to indicate the point at which he should operate." For there is not much difference between that and "Give my compliments to General Porter, and tell him to stay where he is."

Was there a disobedience of the joint order? Nobody claims that there was, except as modified by McDowell; and it was not modified by McDowell, except to thwart what General Porter thought ought to be done with the 17,000 men, and to leave him there with his force of 9,000 or 10,000 men—a force utterly insignificant, as compared with what they both knew was over on the other side. I will not enter into a dispute with the Recorder as to where each division of the enemy's troops was. They were there, as everybody knew. Longstreet, Wilcox, Marshall, and Williams have told you where they were. Corporal Solomon Thomas and his reverend associates, and the medical assistant surgeons of this, that, and the other regiment, may come and tell you to the contrary, but there is the evidence. It hardly needed more than Buford's dispatch to demonstrate it.

Well, both the Recorder and the Judge-Advocate-General say that there was a retreat, and that that was a violation of the joint order. It is pretty late in the history of this discussion, as it appears to me, for us to be arguing the question upon the evidence as to whether there was a retreat that day. I think we will be stultifying ourselves to discuss that matter any more, unless we accept the learned Recorder's military view. If you do, then there was a retreat. He says that when

General Morell's force, in obedience to the order of McDowell, was withdrawn from beyond the railroad and brought back to the road and placed under cover to "come the same game" upon the enemy, as they were evidently coming upon him, and so Sykes' brigade was withdrawn 100 or 200 or 300 yards to make room for them, he says that was a retreat. Well, it seems to me that there was a pretty emphatic expression upon the countenances of the several members of the Board about that when the evidence was coming in. It seemed to be a pretty plain indication that some of us did not know what the word "retreat" meant. We do not pretend to dilate now upon that question. There it stands upon the record. All the witnesses, as it seems to me, substantially agree that there was not any retreat; that there was nothing in the nature of a retreat; there were movements back and forth. If a brigade is moved up 100 or 200 yards we do not call that an advance upon the enemy; and if they withdraw to give place for the movements of other brigades, we do not call that a retreat. Well, that is all there was that day affecting in the least the situation.

It is true that, under the circumstances which I shall presently describe, there is claimed to have been an order to General Sturgis—or so stated by him, and forgotten from the outset by General Porter—there was a direction to General Sturgis, who was in the rear of Sykes, to go back to Manassas Junction; and then there was apparently an almost immediate recall, and they came back before they had got anywhere near Manassas Junction; and it is not far from the junction of the Sudley Springs and the Manassas and Gainesville road to Manassas Junction. Ah, but, says the Recorder, there was an *intention* to retreat; and in a case of petit larceny, he says, the taking of a watch or other chattel and having it in your hand, even for a moment, makes out the crime. Well, is this a petit larceny court? We think that sometimes he has had that idea. We supposed it was a great military tribunal, examining into a question according to the recognized maxims of warfare, not to judge that there was a retreat unless there was a retreat, and when there was no retreat, finding that there was none; but if this Board is going to be degraded into a police justice's court, I for one beg leave to retire. I should retire beyond Manassas Junction. It seems to me that we should be imposing upon the good nature of the Board if we took up the details and answered the criticisms of the learned Recorder about the movements in the nature of a retreat. He said a good many other ingenious things; it seems to me that a good many nights must have been employed in digging them out—keen and crispy criticisms upon the evidence. But how any of them fairly weigh upon the mind of the Board as indicating a retreat it is impossible for me to guess. It would be a waste of time to discuss that question. They all admit of the obvious answer that a great deal of the testimony upon which they were founded was from utterly incompetent men. Dr. Faxon; who is he? Dr. Faxon was assistant surgeon of a Massachusetts regiment. His office required him to attend to his pills and powders, his lancets and his cutting knives; he did not notice anything in particular, but he thought there was a retreat. But Morell, and Butterfield, and Sykes, and Warren, and Griffin, all skilled leaders, didn't see it. Well, it is the medical view of the situation.

We do not believe it will be a valuable use of the few remaining hours of this day to discuss that question of a retreat, and so we leave the subject of the joint order. All pretenses of disobedience of that order have long since been exploded. If it was violated, it was not violated by Porter. If it was varied from, he could not vary from it, because

the responsibility was on other shoulders. He wanted to do, with a force which possibly might have been adequate, what here and there in this case it has been claimed he ought to have done, but he was thwarted by the peremptory refusal of his superior officer. In that same connection we call the attention of the Board to a most remarkable document, and one that has excited no little curiosity, one that was sent here by the Secretary of War, or under his authoritative sanction. We have tried to get the Recorder to admit its paternity, but he does not see fit to do so, and we have had to look at the internal evidences, which are sometimes quite conclusive. The external evidences are considerable, because on the back of it is this endorsement, which does not say who wrote it or where it came from, but which indicates, it seems to me, its source:

WASHINGTON, *June 15th*, 1878.

Respectfully referred to Maj. A. B. Gardner, Judge-Advocate, U. S. A., Recorder of Board, appointed by S. O. 78, of April 12, 1878, from this office.

It is understood that *General Pope* wishes Maj. T. C. H. Smith, paymaster U. S. A., to attend the trial, and the Secretary of War thinks it would be well to subpœna him, as he is quite familiar with the facts.

By order of the Secretary of War.

(Signed) E. D. TOWNSEND,
Adjutant-General.

The RECORDER. Do I understand that that is in evidence?

Mr. CHOATE. No; I am using it as part of my argument.

The RECORDER. Then I shall bring it to the notice of the Board that the gentleman is arguing upon what is not in evidence.

Mr. CHOATE. None of my argument is in evidence.

Mr. MALTBY. That was admitted and shown to the Board during this session, though the name of the author was not required.

The PRESIDENT OF THE BOARD. Not admitted as evidence, but as a suggestion of a line of argument.

The RECORDER. Is it put upon the record to be printed as the rest?

The PRESIDENT OF THE BOARD. Not at all; it is received as a line of argument.

Mr. CHOATE. I will ask leave to incorporate it in my argument. There is some little indication of its authorship. It is sometimes said that the style is indicative. I think the style is very indicative, and if you can attribute a part of it to anybody, perhaps you can impute the rest of it to the same author. Now, I find in a letter of General John Pope to the Compte de Paris, written from Fort Leavenworth, Kansas, December 21, 1876, this sentence:

The greater the force of the enemy in our front, the greater need there was of the help of Porter's corps, and the greater his obligation to render it, and *if you could prove that the whole Southern Confederacy was in front of him on that day, you would only succeed in blackening his crime—the crime of deserting the field of battle and abandoning his comrades* to the unequal odds he left behind him.

Now, in the document thus indorsed by the Secretary of War I find this:

The greater the force of the enemy in front of Porter, the greater the necessity of his aid, and if the whole Southern Confederacy had been before him, it only made his desertion of the rest of the Army the more shameful.

I should not suppose that better external and internal evidence could be furnished or required than this of the authorship of this remarkable document, which has been sent here under the imprimatur of the Secretary of War for you to consider, and I trust you will consider it. I care not whether it originated with General Pope, whose language it evidently bears, or with Colonel Smith, whose name is upon the back of it,

or from some unknown source, which appears to be pressing this prosecution from behind. It is the last authoritative statement, prior to the Recorder's, of the argument, and in that point of view I want to read it. If it differs from what was claimed on the former trial; if it differs from what General Pope then claimed; if it differs from what General McDowell then claimed; if it differs from what he claimed at Governor's Island; if it differs from what the learned Recorder now claims, I give the government the benefit of the doubt. They may choose between their various theories when they get through.

Now, I will read this. The theory of it is this, that Porter was at fault for not attacking when General McDowell was going around on the Sudley road. Was ever anything so preposterous as that heard before, in view of the claims that have now been made, and all the evidence that has been laid before you? After McDowell's refusal to let King stop a moment that he might make an advance, they say Porter was at fault in not making an attack any time while McDowell, with King's division and Rickett's division, was going around where they went. Now, there is a remarkable circumstance connected with this theory, the cardinal idea of which is that King and Ricketts were within supporting distance, although they were being led by their commander away from the scene of action, in which he refused to let them participate, and away from this theory; that is to say, around upon the Sudley road, where we always supposed King and Ricketts both went up. But some clergyman or sutler, or possibly Corporal Solomon Thomas, having said that he saw Ricketts' division around on what is called the new road, the gentleman who got up this fancy map, as we will call it, which harmonizes with the Recorder's view, put Ricketts away around—not on this road to Sudley, but away around here [on the "New road" from Manassas Station to the Sudley Springs road], several miles further off. Now, in the light of that consideration, we will observe what this paper says about their being in supporting distance as a reason why Porter should have made an attack between 12 and 2 o'clock:

At 12 o'clock m. on the 29th of August, 1862, a severe battle was going on, and so continued until dark, between the right wing of the Union Army and the Confederate forces under General T. J. Jackson, at Groveton, on the turnpike leading from Centreville to Warrenton, Va.

The line of battle was perpendicular to the turnpike, the left of our force and the right of the enemy's being just south of that road.

If this came from General Pope, it is an emphatic denial of the Recorder's theories about a contrary position of his own troops.

At twelve o'clock noon—

That is the objective point of time—

when the battle of the right wing was at the hottest—

Just think of that, in view of the clear proof to the contrary—

these two corps, Porter's leading, had reached a point west of the Bethlehem Church. At that church the road to Sudley Springs branched to the right (north) and passed directly through the lines of battle.

The orders of these two corps, which directed their march from Manassas Junction upon Gainesville, are given in the testimony before the Porter court-martial, and required their march to be continued towards Gainesville until they connected by their right with the right wing of the army. When they reached Bethlehem Church, about half-way between Manassas Junction and Gainesville, they were in full hearing of the battle going on on the right, and found their advance in the presence of a force of the enemy.

The writer of this paper thought the enemy was there.

McDowell, finding the whole road in front of him toward Gainesville blocked up by Porter's corps, which was stretched out in column, and knowing how necessary it was

for him as well as Porter to go immediately into action, told Porter to attack at once where he was, and that he (McDowell) would take the Sudley Springs road, on which the rear of Porter's column rested, and join the battle on the right.

See how this differs from McDowell at Governor's Island and from the Recorder here:

That McDowell would have attacked, as he told Porter to do, had he been in front, there is not the faintest shadow of a doubt.

McDowell declares that he thought that he then had so far advanced that they were close up to the pike, and that there was not room for any considerable force of the enemy between them and the pike. And it is clear from an examination of his whole testimony and his false position admitted in it, that he thought they were very near the pike at twelve o'clock.

At that time and for two hours afterwards McDowell's corps was still with Porter.

What an outrageous proposition that is. Porter sends back for King's division. McDowell says "You cannot have it," and takes it away with him, and this paper says that at that time, and for two hours afterwards, all the while they were getting up to the Henry house, McDowell was still with Porter.

Or so near that its rear, as it marched to the right up the Sudley Springs road from Bethlehem Church, must have been still in view, so that Porter's attack could and would, if necessary, have been supported by McDowell. At the time Porter's attack, by every rule of warfare, and of military obligation, should have been made, and for hours afterwards there were present on the ground, not much (if any) less than twenty thousand Union troops, viz. the corps of McDowell and Porter, less Ricketts' division, but plus Piatt's brigade of Sturgis' division which was with Porter's corps, in addition to his own two divisions.

The substance of it all is that Porter was at fault for not attacking while McDowell was going off to make connection on the right, after having positively refused to let him have a man. That is about a fair specimen of the ground upon which this prosecution has been pressed.

The Board then, at one o'clock, took a recess of one hour.

Mr. CHOATE resumed his argument as follows:

PORTER'S TESTIMONY BEFORE THE M'DOWELL COURT OF INQUIRY, IN JANUARY, 1863.

I desire now to call attention to what I regard as a most authentic and true statement of the situation then and there; I mean the sworn statement of General Porter before the McDowell court of inquiry. Much criticism has been passed on that.

I desire to incorporate it as a part of my argument, because it will stand any criticism that can be brought to bear upon it. The facts were then fresh in the mind of General Porter.

It is true that the examination was under the most constrained circumstances. It is not true, and the Recorder has been misinformed, when he said that General Porter volunteered his evidence there. He was brought compulsorily before the court. It is one of those little errors which seem to me of very little consequence, but which give a coloring to the argument for which they are presented, like the statement that General Hunter was invited to sit upon the court-martial by General Porter, and was one of his intimate friends, both of which are denied by him. But the circumstances under which Porter was examined were these: It was after all the evidence in his case had been closed; it was after McDowell had given destructive testimony against

him before that court, which he then knew, and we now know, was not true. It was pending the time between the closing of the evidence and the publication of the sentence. He was not permitted to testify fully and freely; he was restricted to certain questions which bore upon the question of this joint order, and of the relations of Porter and McDowell. Fortunately you will find the matter stated, with perfect consistency, not only with its various parts, but, as we claim, with all the subsequent statements that General Porter has ever made. The ground of criticism as to inconsistency in itself is this: He speaks of various movements and intentions as to his operations at Dawkins' Branch, after General McDowell left him, and of the effect of what General McDowell said to him, but the court will see, when they come to examine it, that he had always in his mind the effect of these three things, the recognized presence of the enemy in front, General McDowell's injunction to remain where he was, and the fact of General McDowell taking King with his 9,000 men away from the combination—away from any possible operation under the joint order. It is said also, that the statements in this deposition are falsified and contradicted by the dispatches which are now produced in this, that General Porter said it would be "a fatal military blunder" to move over to the front, or to the right and front, as it was insisted that General McDowell had directed him to do. It is said that by these dispatches it appears that he did afterwards direct movements over to the front or to the right and front. That certainly is not so. The only movement to the right and front was that which was put an end to by General McDowell. The only movement to the right was that made through Morell's deployment over beyond the railroad, exactly to the right, after General McDowell had personally quitted General Porter, and before the message had been received through Locke for him to remain where he was, and that he should take King with him. Now, I will read a few passages of General Porter's testimony before the McDowell court of inquiry, because, in view of the argument I presented this morning, it seems to me that it will come in as a complete corroboration.

Question (By Court). What order did General McDowell give, or what authority did he exercise over you, and in virtue of whose order? State fully and particularly.

Answer. General McDowell exercised authority over me in obedience to an order of General Pope's, addressed jointly to General McDowell and me, and which I presume is in possession of the court. I have no copy of it. Our commands being united, he necessarily came into the command under the Articles of War.

The witness here stated in substance to the court that the question leads to many things pertaining to the recent court in his case, the decision of which has not yet been announced.

The question requires a statement of what transpired, and he felt, at this time, some delicacy in answering, both so far as General McDowell and himself are concerned. I would have to state the orders under which I was moving in that direction.

The court decided that the question was a proper one.

The witness continued:

That joint order refers to a previous order given to me, of which this is a copy.

The witness produced a copy of an order from Major-General Pope, dated Headquarters Army of Virginia, Centreville, August 29, 1862, which was read by the Recorder, and is appended to the proceedings of the day and marked A.

The witness continued:

Under that order, King's division constituted a part of my command. I was moving toward Gainesville when I received the joint order, and was joined by General McDowell, who had also received a copy of the joint order. *I had at that time received notice of the enemy being in front and had captured two prisoners. My command was then forming in line, preparatory to moving and advancing towards Gainesville.* General McDowell, on arriving, showed me the joint order, a copy of which I acknowledged having in my possession. An expression of opinion then given by him to the effect that that was no place to fight a battle, and that I was too far out, which, taken in connection with the conversation, I considered an order, *and stopped further progress towards*

Gainesville for a short time. General McDowell and I went to the right, which was rather to the north, with the view of seeing the character of the country, *and with the idea of connecting, as that joint order required, with the troops on my right.* But very few words passed between us, and I suggested, from the character of the country, that he should take King's division with him, *and form connection on the right of the timber which was then on the left of Reynolds, or presumed to be Reynolds.* He left me suddenly, not replying to a call from me to the effect, "What should I do?" and with no understanding on my part how I should be governed, I immediately returned to my command. *On the way back, seeing the enemy gathering on my front, I sent an officer (Lieutenant-Colonel Locke, my chief of staff), to King's division, directing it to remain where it was for the present, and commenced moving my command towards Gainesville, and one division to the right or north of the road. I received an answer from General McDowell to remain where I was; he was going to the right and would take King with him.* He did go, taking King's division, *as I presumed, to take position on the left of Reynolds.* I remained where I was. When General McDowell left me, I did not know where he had gone. No troops were in sight, *and I knew of the position of Reynolds and Sigel, who were on our right, merely by the sound of Sigel's cannon and from information that day, that Reynolds was in the vicinity of Groveton.* The head of my corps was on the first stream after leaving Manassas Junction on the road to Gainesville, one division in the line of battle, or the most of it.

Question (by Court). Did you consider the expression of General McDowell, as stated by you, that you were too far to the front, and that this was no place to fight a battle, in the light of an order not to advance, but to resume your original position?

Answer. *I did, when King's division was taken from me,* and as countermanding the first order of General Pope, under the authority given him by that joint order.

Question (by Court). Was such an order a proper one under the circumstances? If not, state why.

Answer. I did not think so, and for that reason *when General McDowell left me, I continued my movement* as if I had not seen the joint order. My previous order required me to go to Gainesville, and from information received by the bearer of the first order, General Gibbon, I knew it was to prevent the junction of the advancing enemy and Jackson's force, then near Groveton, and that the object was to strike the turnpike to Gainesville before the advancing column should arrive. The sooner we arrived there the more effective would be our action. That order directed me to move quickly or we would lose much. That order had been seen by General McDowell, and when he altered it, as I conceived he had the authority, I presumed he knew more fully than I did the plans of General Pope. I will add that the joint order contemplated forming a line connecting with the troops on the right, and as I presumed, as General McDowell acted, taking King's division with him, that he intended to form such a line. *I thought at the time that the attack should have been made at once upon the troops as they were coming to us and as soon as possible.*

Question (by Court). State, so far as you know, what followed, so far as the movements of General McDowell's troops and your own were concerned, and what orders you subsequently received from General McDowell.

Answer. General McDowell took King off to the right. I know nothing further of his movements. I remained where I was until three o'clock next morning. A portion of the command left at daybreak. I received no orders whatever from General McDowell.

Question. (By Court.) *But for this order, what movement would you have made, and have you reason to suppose that if you had not been stopped the junction of Longstreet and Jackson would have been effected?*

Answer. *I should have continued moving towards Gainesville, and until we got out to the turnpike, or met the enemy; I presume we would have prevented the junction or been whipped.*

* * * * * * *

Question. (By General McDowell.) Under what relations, as to command, did you and General McDowell move from Manassas and continue, prior to the receipt of General Pope's joint order?

Answer. I did not know that General McDowell was going from Manassas, and I have no recollection of any relations whatever, nor of any understanding.

Question. (By General McDowell.) Was there nothing said about General McDowell being the senior, and of his commanding the whole by virtue of his rank?

Answer. Nothing that I know of.

Question. (By General McDowell.) What time did you take up your line of march from Manassas Junction for Gainesville?

Answer. The hour the head of the column left, I presume, was about ten o'clock; it may have been earlier. Ammunition had been distributed to the men, or was directed to be distributed, and the command to be put in motion immediately.

Question. (By General McDowell.) *When you received the joint order, where were you personally, and where was your command?*

Answer. *I was at the head of my column, and a portion of the command, or the head of*

the column, was then forming line in front; one regiment, as skirmishers, was in advance, and also a small party of cavalry which I had as escort. The remainder of the corps was on the road. The head of my column was in the Manassas road to Gainesville, at the first stream, as previously described by me.

Question. (By General McDowell.) The witness says he received an order from General McDowell, or what he considered an order, when General McDowell first joined him, which order he did not obey. Will witness state why he disobeyed what he considered an order?

Answer. The order I have said I considered an order in connection with his conversation, and his taking King's division from me. I therefore did obey it.

Question. (By General McDowell.) What did you understand to be the effect of General McDowell's conversation; was it that you were to go no further in the direction of Gainsville than you then were?

Answer. The conversation was in connection with moving over to the right, which necessarily would prevent an advance.

That is in connection with McDowell's taking King over to connect on the right.

It will be observed from what follows that General Porter had not the least impression of any direction from McDowell after he left him with King, to go to the front, or right and front.

Question. (By General McDowell.) You state you did not think General McDowell's order (if it was one) a proper one, and that for that reason you continued your movement as if you had not seen the joint order. Is the witness to be understood that this was in obedience of what he has stated to be General McDowell's order?

Answer. I did not consider *that* an order at that time, and have tried to convey that impression, but it was an expression of opinion which I might have construed as an order; *but when General McDowell left me, he gave no reply to my question, and seeing the enemy in my front, I considered myself free to act according to my own judgment until I received notice of the withdrawal of King.*

Question. (By General McDowell.) What was the effect on your movements of the message you state was brought to you by Colonel Locke (your chief of staff), from General McDowell, that you were to stay where you were, that he was going to the right, and would take King with him?

Answer. The effect was to post my command, or a portion of the command, in line where the head of the column then was, prepared to resist the advance of an enemy in that direction, and turn a portion of the command a little back on the road. After doing this, I sent messengers to General Pope, informing him of the fact.

Question. (By General McDowell.) Informing General Pope of what fact?

Answer. Of my present position and what there was in my front. I will say that I sent several messengers, conveying, to the best of my recollection, the general information of my location, and one *telling him that King's division had been taken to the right.* Some of those messengers never returned to me, and I presume were captured.

Question. (By General McDowell.) Did you receive any further message from General McDowell, other than the one you state that Colonel Locke brought you, as before stated, which you considered an order?

Answer. None that I recollect of. I had memoranda which I sent to General Morell, and which conveys the general impression that I had received messages from General McDowell, but I have no recollection of receiving them, nor were they brought to mind till their appearance before the court. That memoranda says General McDowell informs me all is going well on the right, or something to that effect.

Question. (By General McDowell.) Is witness to be understood he did not on the 29th, after seeing General McDowell the second time, receive any instructions or directions or orders from General McDowell to move his troops from where he states he was directed to remain?

Answer. I have no recollection, and I am confident I received no message or order from him other than those that I have mentioned.

The witness speaks of the effect of General McDowell's message as brought by General Locke, to cause him to remain in position.

Question. (By General McDowell.) How far was it from the head of witness' column to Gainesville?

Answer. I do not know; I had never been over that portion of the country, and have not been since.

Question. (By General McDowell.) How long had the witness' head of column been halted when General McDowell joined him?

Answer. I cannot say, but not long. It had halted before I arrived there.

Question. (By General McDowell.) Witness speaks of the effect of General McDowell's

message (as brought by Colonel Locke) to have been to cause him to remain in position at the place where General McDowell first saw him. How long did witness' troops continue in this position?

Answer. A portion of the command remained there until daybreak the following morning, and some till after daybreak. The most of Morell's division was on or near that ground all day.

Question. (By General McDowell.) Did witness conceive himself prohibited from making, or attempting to make, any movement to the front, or to the right, or to the front and right?

Answer. By that direction or order taken in connection with the joint order, I considered myself checked in advancing, *especially taken in connection with the removal of King's division. I did not consider that I could move to the right, and I considered that General McDowell took King's division to form a connection on the right, or to go to the right and form such a connection, as was possible. I add further, that I considered it impracticable to go to the right.*

Question. (By General McDowell.) Did witness *attempt* to make any movement in either of the directions above named?

Answer. Not directly to the right. I did to the right and front, and when I received the last message from General McDowell to remain where I was, I recalled it.

Showing that the attempt referred to is the one stated in the subsequent message from himself to McDowell, that he had made an attempt to get Morell over to the right, and before the message came by Colonel Locke to remain where he was.

Then the Recorder has insisted that the orders to Morell "to push over to the aid of Sigel" were in express contradiction of this statement that he made no attempt either to the right or the right and front. But the direction to Sigel was not to the right or right and front. McDowell and Porter together had found it impracticable to enter the woods to the right. What was the direction to move to the aid of Sigel? Why, it was to move over and strike upon the road by which King was marching; that was the movement; not into and through the woods to the right, beyond where McDowell and Porter had gone together, but farther back in the direction to strike the Sudley road, which was the road by which King was moving.

Question. (By General McDowell.) Did you make no attempt to go to the front or the right, or the right and front, after that message?

Answer. I made no attempt with any body of troops. I sent messengers through there to go to General Pope, and to get information from the troops on the right.

Question. (By General McDowell.) After General McDowell left the witness, did the witness not know he was expected by General McDowell to move to the right or to the right and front?

Answer. I did not.

My learned friend says that these subsequent messages to go to the aid of Sigel show that he did not know that McDowell did expect it. There is not the least warrant for that on a fair reading of this testimony. This point, and the bearing and connection of the dispatches to what took place that afternoon, are so fully explained by Mr. Bullitt that I pass on. Let us read it, however, once more:

Question. (By General McDowell.) Witness speaks of having reported to General Pope. When did witness conceive himself as no longer under General McDowell?

Answer. My messages were addressed to General McDowell, I think, all of them. The messengers were directed to deliver them to General Pope, if they saw or met him. I considered myself as limited in my operations under General McDowell's orders, until I should receive directions from General Pope.

Question. (By General McDowell.) How long was witness and General McDowell together before they moved to the right "with a view of seeing the character of the country"?

Answer. I do not think we were together more than four or five minutes, though I have no distinct recollection.

Question. (By General McDowell.) How long were they together, after moving to the right?

Answer. It may have been ten or twelve minutes, perhaps longer.

Question. (By General McDowell.) You have stated "when General McDowell left me, I did not know where he had gone." Have you not stated before the recent court-martial, in your defense, as follows: "We" (General McDowell and yourself) "soon parted, General McDowell to proceed towards the Sudley Springs road, I to return to the position at which he first spoke to me, after our meeting"?

Answer. I know now where General McDowell went. I did not know then.

Question. (By General McDowell.) After General McDowell left you, you say you sent an officer to King's division, directing it to remain where it was, for the present. What was the necessity for this order? Had the division, so far as you then knew, been ordered elsewhere?

Answer. *I sent the message to that division to remain where it was for the present, in order not to bring it to the front, where I was forming a line, before I was ready for it, and intending to use it as the main support.*

Question. (By General McDowell.) Why did you continue to regard King's division as attached to your command after the receipt of the joint order?

Answer. I never thought of the point before, but General McDowell had left me and, as I understood, in no wise changing the relations of King's division to my corps.

Question. (By General McDowell.) Did not the joint order itself modify the first order you received from General Pope?

Answer. It placed all under the direction of General McDowell.

Question (by General McDowell). If it placed *all* under General McDowell, how did you regard the fact of its being addressed jointly to you and him, and not to him only, if he was the *sole* commander?

Answer. I had reason to believe that order was written on an application made by me to General Pope for orders to be given to me in writing; this, in consequence of having received verbal orders from him by persons whom I knew nothing of, and which were contrary to some instructions which I had received in writing. I presume the order was written by General Pope, because I had a portion of General McDowell's command with me, and the order was intended for both.

Question (by General McDowell). Did witness send any written order to King's division?

Answer. No, sir.

Question (by General McDowell). How long was it after you left General McDowell, before you sent Colonel Locke to King's division?

Answer. I sent him as soon as I returned to my command after leaving General McDowell. I returned immediately.

I do not know, nor do I care, whether there was any different statement by General Porter as to the legal effect of the joint order. I have not been able to find it. But if there was, it had no relevancy whatever to this case. The pretended contradictions and inconsistencies imputed by the Recorder do not exist; and I submit that that piece of testimony from which I have now read these extracts is one of the strongest pieces of testimony in this case that has been presented by the government, and that it is fatal entirely to the prosecution in this respect.

THE 4.30 P. M. ORDER.

Now, a few words as to the pretense of a disobedience, on the part of General Porter, to the 4.30 p. m. order of the 29th. So much has been said already on that subject that I am only called upon to answer what the Recorder has said about it.

HEADQUARTERS IN THE FIELD,
August 29, 1862—4.30 p. m.

Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves, and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

JOHN POPE,
Major-General Commanding.

Major-General PORTER.

The Recorder's first and main proposition is, that there is no new evidence before this Board, and that the case is not changed from the atti-

tude which it held on the former trial. It does seem to me that such a statement ignores all the real evidence in this case. But, I suppose, it is necessary, in attempting to make an argument against General Porter, at this stage of the case and on this subject, to ignore and forget all material evidence. No new evidence! What do you say to the evidence of General Ruggles, one of the most important pieces of testimony introduced into this case, in respect to the 4:30 p. m. order?

General Ruggles was the man who wrote that order. It was very material to know whether the "4.30" which is on it could be taken as a certain indication of its actual date. Why was that so? Because Captain Pope had undertaken to say that he knew that he started with the order at 4.30, because that was the date of the order; but he had no other means of knowledge, and no other foundation for his recollection.

Now, then, if General Ruggles had written the order, and had dated it upon delivery to Captain Pope, there would have been some sense and substance to Captain Pope's testimony, some foundation as to the beginning of the half hour to two hours, which, from his various statements, it must be regarded that he has said it took him to go with it. But Ruggles says his habit was, and he knows it was followed in this instance, when he and General Pope began the work of preparing the order, he acting as scribe, and General Pope as dictator, to date the order first, and whether, after writing the "4.30 p. m.," there were interruptions, or whether the whole order was written consecutively and immediately afterwards, or whether he and the general went about other business in the mean time, he has no means of stating. Neither he nor any one else has any means of stating. So that the very foundation of Captain Pope's evidence entirely falls out of the case, viz, immediate connection between 4.30 as the time of the beginning of the order, and 4.30 as the time of its delivery to Captain Pope. Now, when the Recorder says that there is not any new evidence in the case, he must have forgotten that.

Then, is there no other new evidence in the case? What does he say to the testimony of Captain Randol, of the regular service, who came from Boston Harbor, where he is now stationed? The Board cannot have forgotten his clear and strong statement. If my recollection does not fail me, he saw the delivery of that order to General Porter. He saw the officer come up and deliver it; and adds his testimony to that of five or six witnesses, who were produced on the trial before the court-martial, that it was sundown—6.30, not 5 o'clock, or 5.30. Had the Recorder forgotten that when he said "There is no new evidence"? Should he say that there is no new evidence, in face of the fact of the complete demolition of all the government evidence on the former trial? Is the testimony of Captain Moale, and of Lieutenant Jones, no new evidence? It is true they were not present on the scene of action there, and they did not witness the delivery or the receipt of that order; but they had a far more fatal piece of new evidence to produce, to the destruction of the government case on this head; and what was it? Why, that Captain Pope, when he was no longer in the immediate service of his uncle, when he was in a remote part of the continent, years afterwards, when there was no anticipation of any new trial for Porter, when it was not supposed that any such transaction could take place, in friendly discourse with his associates, with his mess in the company to which he belonged, he *confessed*—that is the word to use—confessed that his testimony on the former trial was not true. He had said on the former trial that he presumed that he got that order at 4.30, because it was dated 4.30, and he accomplished the journey in half an hour,

and delivered the order to General Porter at 5 o'clock; with great precision, as if he had a clear recollection about it, he said, "Perhaps within three minutes after five." But to Captain Moale and Lieutenant Jones he confessed that on the way with that order he got lost, and to one of them he said he was from one to two hours, and to the other he said he was a very long time, making the same statement, that he had lost his way in carrying the order.

Now, where is the substance of the evidence for the prosecution on that part of the case? Where is there any evidence whatever, to meet that offered by General Porter, that it was received at 6.30 p. m., sundown or after? I cannot, as a lawyer, see any. And how a military man can discover any substance of evidence whatever left on the part of the prosecution, it is impossible for me to imagine. Further than that, you have had Capt. Douglas Pope recalled. He has endeavored to show you how he came. You have had Duffee, the orderly, recalled, and he, too, has tried to show you how he came. I submit that their evidence on this subject, on this new examination, independent of all new evidence, independent of the demolition of their former statements, by the testimony of Captain Moale and Lieutenant Jones, shows that they had not the least idea which way they went, and that they have not now. They tried to pick out a path upon the map; but you have positive proof that Duffee said that until he went and viewed the ground, he thought he went around through Five Forks.

What, then, is the fair conclusion from all the testimony as it stands? Is it not that the testimony of Douglas Pope and of Duffee on the former trial ought not to have been credited, and that now it cannot be credited, in the least? The fact is established of their having lost their way, of their seeing no troops on the Sudley road, which from below the old Alexandria pike is where they pretend to have come, when King's division and Ricketts' division must have been blocking up that road entirely, so that the passage of any one would have been a work of extreme difficulty. Yet they did not see a soldier. What is the inevitable conclusion? That they got down to the junction somehow after wandering in the woods, whether by Wheeler's or down by Compton's Lane, or somewhere else; and that they struck the Alexandria road and came down to the junction of the Sudley road is probable. But it is not possible that from there they went down the Sudley road, because then they must have met these troops. The ingenious map-maker for the government has attempted to relieve that difficulty by getting Ricketts off the road. But it will hardly serve the purpose. Ricketts was on the Sudley road right behind King. There is but one way that they could not have seen a soldier, and that was to cross directly the Sudley road and go down the continuation of the old Warrenton, Alexandria and Washington pike from their junction in the direction of Manassas, and get around some way on the Manassas road, and come up by the junction by Bethlehem church, and that is the way they took, and that accounts for their being so long upon the way, and shows the

TIME OF DELIVERY OF 4.30 ORDER.

There is one other remark to be made in connection with the 4.30 p. m. order as to the time of its delivery. There was testimony on the former trial, and I think there is testimony now, that they came up to the junction from the direction of Manassas to the headquarters of General Porter, and it seems to me that there is nothing left whatever of the case, but to conclude, taking all the parts of the testimony together,

that they did come around by that way, and must necessarily, receiving that order some time after 4.30, and that they, by some round-about way, must have got lost. Then you make all the evidence coincide. You accept as true these six witnesses introduced on the part of General Porter, all credible, all intelligent, all respectable, that it was received not before sundown. But there is one other fatal circumstance which I must not omit to mention. In all celebrated cases, I think the experience of every lawyer will permit him to testify that before the case concludes, there is some piece of false evidence foisted upon the case, sometimes even by voluntary evidence from some unknown source, originated and promoted by some unknown party. That has actually taken place in this instance. A third party, a second orderly, one Dyer, has been produced here, who pretends to have accompanied Captain Pope and Orderly Duffee on that expedition. But Duffee does not recollect his presence; if you can accept Duffee's testimony, it is that he was not there, and the most convincing proof that he was not there is what he says himself. I will not recall all the particulars of how he recognized the road when he went down there. He went over the ground with Duffee to find the way, and he found it by an unmistakable landmark of a house with a four-square roof. That was the way he recognized it as he rode over. He says he went with Captain Pope sixteen years ago, and then saw the same house which he recognized last week. Unfortunately for that statement, it turned out that that four-square house was built after these battles were over. He said he did not go quite up to General Porter's headquarters, but that he saw the church by which his headquarters were, and he recognized the church, knew it was a church by the steeple. Well, it turned out upon authentic testimony, which cannot be disbelieved or doubted, that the church never had a steeple. The Recorder has an idea that it was in ruins, a melancholy ruin, and that perhaps two of the walls had fallen in, so that anybody could see that it was a sacred ruin. But that did not impress the man Dyer. He saw a steeple which never had existed. Then he saw General Porter come out of his tent with Captain Pope. But the evidence is clear that General Porter had no tent. And the evidence on which General Porter was convicted before, and which was reasserted by Judge-Advocate Holt in melancholy tones in his paper to the President, was that General Porter was lying down under a tree, and continued lying under the tree for several minutes after the order was received. But this man Dyer pretended to have seen him come out from around the corner of his tent with Captain Pope. But to crown all, he swears that he went back with Captain Pope, and went direct to General Pope's headquarters. Well, how was that? Captain Pope testified that it was about 8 o'clock when he reached the scene of headquarters on his return, and he was confused at so many camp-fires; he could not tell General Pope's headquarters from those of anybody else, and he had to go to General McDowell's headquarters to inquire which General Pope's headquarters were. But this witness says they got there before dark, and saw no camp-fires, and did not go to McDowell but went straight to Pope. Now, we are known by the company we keep, and when you find these three witnesses now brought, thus standing together, Douglass Pope, Duffee, and Dyer, what remains to sustain the ground of this prosecution on their evidence and accusation? It seems to me that they all tumble out of the case together.

But there is another new and startling piece of evidence which demonstrates that the 4.30 p. m. order was not received by Porter until sunset. At page 810 of the new testimony, there is a fatal piece of

evidence—two of them—and the Recorder must have been slumbering when he failed to recollect them. The necessary part of the case of the prosecution is that this 4.30 p. m. order was received at 5 or 5.30 o'clock, in time for General Porter to have made an attack before dark. But here is a dispatch which General Porter wrote at 6 p. m., which absolutely negatives, in every line of it, all possible idea of his having received this order to attack, not only from the fact that he says he has no cavalry—and Captain Pope brought him some orderlies as now appears, left three with him—but the whole tenor of the dispatch shows that he had heard nothing from McDowell or Pope for a long time, and did not know what the situation was. Let me read this dispatch:

Failed in getting Morell over to you. After wandering about the woods for a time, I withdrew him, and while doing so artillery opened on us. My scouts could not get through. Each one found the enemy between us, and I believe some have been captured. Infantry are also in front. I am trying to get a battery, but have not succeeded as yet. From the masses of dust on our left, and from reports of scouts, think the enemy are moving largely in that way. Please communicate the way this messenger came. I have no cavalry or messengers now. Please let me know your designs; whether you retire or not. I cannot get water, and am out of provisions. Have lost a few men from infantry firing.

Aug. 29—6 p. m.

F. J. PORTER,
Maj. Gen. Vols.

Now, when he wrote that dispatch at 6 p. m., had he yet received the 4.30 p. m. order? That is impossible.

Another thing I must refer to in order to refute the suggestions made about this. He says: "I have no cavalry or messengers." Where was he when he wrote that? He was at his headquarters at Bethlehem Church. "O," says the Recorder, "he had cavalry." Yes; there were cavalry up by Morell, because, shortly afterward, not getting any cavalry from McDowell under this message, he sends to Morell for some cavalry. The meaning is, not to deny that he had cavalry up at the other end of his line, but none at his headquarters. And that leads me to this—in this place I may as well say it as in any other—that as to the alleged variations and inconsistencies in the various statements of General Porter, and particularly in his opening statement before this Board, there are just exactly two. And the wonder to me always has been, and the wonder to me when General Porter's opening statement was prepared was, that it was possible, or could be possible, to make a statement in which there should be so few omissions or failures of memory as compared with the facts which now appear demonstrated here. There are two. One is a difference of recollection between him and Sturgis, whether he knew of the presence of General Sturgis, and ordered him back to Manassas with his 840 men on that day. There is a direct difference of recollection between them, and, judging it by the ordinary laws of evidence, it looks to me as if Sturgis's recollection was the better. But I am thrown into confusion upon that when I refer to Porter's examination upon the McDowell court of inquiry in January, 1863, when he testified that he knew nothing of the movements of Sturgis on that day. The other failure of memory which the Recorder regards as so destructive to General Porter is in this matter of forgetting that he had some cavalry with Morell that day, a part of a Pennsylvania troop—a troop that Morell, to whom the commander says he was to report, but don't recollect reporting, and Locke and Martin, who were in the front, did not see or have any knowledge of.

So if the testimony of those cavalrymen is to be taken, that must stand confessed, that failure of memory. But it does not in the least affect the

merits of this case, nor in respect to any material point the deductions that are necessarily to be drawn.

That ends what I have to say upon the 4.30 p. m. order, because I assume it to be demonstrated that not being received till sunset, it was then too late to make the attack which was directed by it. That Porter, acting upon the natural impulse of a loyal and devoted soldier, receiving such an order as that from his chief—that his first impulse was to carry it out, is manifest. What did he do? Did he, as was pretended by the Judge-Advocate, and I think is still insisted by the Recorder, send an order to move forward two regiments supported by two more? No. It appears now clearly proved upon the record, that that had all been already done upon some previous but false report that the enemy before him were retreating. But he sent an immediate order to General Morell to make an attack with his whole force, and he followed it up in person instantly to the front, and with such speed that he was guilty of a possible omission which has been charged upon him as an act of criminal neglect. What was that? Why, that Sykes being with him at headquarters, he hurried forward to the front, where Morell was ready to begin an attack, in such haste that he omitted to tell Sykes of the receipt of the order. To my mind, that is only clear proof of Porter's zeal to carry out the order. He found that he had been under a misapprehension about the withdrawal of the forces behind Bull Run, indicated by his dispatches shortly before. He found that General Pope now was insisting that he should make an immediate attack, and he hastens forward. What is in his mind is to carry out that order. He first sends Locke ahead with his order to make an immediate attack with his whole force. He goes to the front, and if it is true, if Sykes' memory is not at fault on this point, he went forward without ordering Sykes or communicating the order to him. If I understand the military maneuvering the order was properly to be given as it was given to Morell to make the attack. Sykes, with his division, was right behind, ready to be brought up in instant support. He was in immediate contact. Now, what is all his parade of rhetoric and of assertion about this failure to exhibit this order to Sykes? It only shows the instant zeal with which Porter sprang to obey that order. Then what happened? He got to the front; he found Morell about ready to obey that order, and darkness was already upon them. I accept the military authority that has been brought into the case, to the effect that it was impracticable then to make an attack. General McDowell said on the former trial that he might have made an attack within an hour after receiving the order. He confessed, on the present examination, that he knew he was wrong about this, confessed that Porter's position was in fact not so far advanced as he had supposed; he will not say exactly how much, but it would have taken much longer to make the attack here ordered than he had previously supposed. Colonel Smith, who before testified, to the destruction of General Porter, that that attack might have been made within an hour, concurring in the opinion then given by McDowell, now comes and frankly states that it would have taken not less than two hours. Suppose it to have been in the neighborhood of seven o'clock, already nearly dark, when Porter got to the front, could he but concur with the conclusion of his skillful subordinate, Morell, that it was too late—two hours, nine o'clock—to complete the movement and push forward into contact with the enemy? I suppose it is a military absurdity to pretend that. So I leave that branch of the case.

Now in respect to those more grievous charges, as they seem to me to be. Having acquitted General Porter of all that can possibly be charged against him under the head of disobedience, now comes the question of whether he was guilty of the frightful crimes charged upon him in the specifications under the second charge, imputing to him shameful treachery and misconduct in the face of the enemy, running away when he knew that a battle was raging on his right, in which the rest of the forces were engaged, by which even the capital of the country itself was involved in danger, and moving off without the least effort, or lying still upon his arms all day without the least effort to assist. You will observe that all this has practically been disposed of in our discussion of the previous question under the joint order, if there was no retreat. The whole pretense of a retreat was based upon the dispatch to McDowell and King, that, as the sound of battle seemed to retire, indicating to him that the main part of our forces were withdrawing behind Bull Run, as the joint order had contemplated the necessity of doing, he had made up his mind to retire also. I never have been able to discover any just ground of complaint as to that suggestion of his. If the circumstances were what he supposed, and what the dispatch shows he supposed, it was not acted upon; there was no movement whatever such as the dispatch contemplated; there was no retreat. The substance of the information upon which he had written that dispatch was immediately contradicted, and he moved forward and directed an advance instead of a retreat. But under the application of the joint order, under General Pope's reiterated injunction in that order that it might be necessary, and that it probably would be necessary, for all of that army to fall back behind Bull Run that night, and under no circumstances to get into any position by which they could not fall behind Bull Run that night, if at three or four or five o'clock in the afternoon he became satisfied from the sound of battle, as this dispatch shows he did, that the rest of the army was falling behind Bull Run, what ought he to have done? Ought he to have left his little band of 9,000 or 10,000 men exposed to the whole rebel army of now 50,000 instead of 25,000, and he the only outpost and wholly unsupported? Well, I know nothing of soldiery, but it does seem to me to be the obvious dictate of common sense that, if that was his belief, the purpose of following the rest of the army behind Bull Run, as indicated in this message to McDowell and King, was not only eminently proper, but under the circumstances was absolutely necessary; and when that information is contradicted, then you find that the first thing he does is to move forward.

As to the numbers of the respective armies that day, I do not propose to afflict you with any further discussion. I have taken it for granted that, from all the statements that have been made up to this time, Porter's force consisted of 10,000 men; that is the proof upon which he was tried before; that is the theory upon which this case has been tried throughout, until the day before yesterday, when the Recorder, upon what we regard as mistaken and fictitious methods, figured it at 12,000 or 15,000. Pope thought it was 12,000, but the actual figures show 10,000. Neither do I know or care what the exact number was of the rebel forces opposed to him on Dawkins' Branch, or between there and the pike; they were all in reporting distance of each other. It was one united force, and an attack by him upon that force at any time after McDowell left him would have brought down together, concentrated upon any part of that ground, the whole of Lee's and Longstreet's force.

And what had he reason to believe they were? He and McDowell agree, upon the testimony as it now stands upon the record, that they knew there were at least 14,100 who must have got there before they did, and they took it for granted that the rest were coming.

Now, what is the nature of the question under this specification? We have got the question of disobedience out of the way. That is all gone. I assume that we have made a complete case in answer to the charge of disobedience. The question on this part of the case then is, the retreat being out of the way, whether it was his duty to make an attack between the time of McDowell's departure, taking King with him, and the receipt of the 4.30 p. m. order. Now, I am perhaps not capable of discussing the military principles that must govern such a question; but I can state upon the one side the theory upon which he was found guilty because he did not attack, and I can state, upon the other, the facts as they now stand, and I think you will agree that, if those facts as they have now been proved had been before that court-martial, there never would have been the least idea of convicting him. In the first place, we have the fact of the actual force that he had; and, substantially, there is no difference between the former trial and this in respect to that. King and Ricketts having been withdrawn from him, he was left with, say, in round numbers, 10,000 men. The Recorder pretends, by a novel method of reckoning, that he had 33,000 men. The triumph of the science of mathematics is here well illustrated. He had his own 13,000 (magnifying this 10,000 to 13,000); then he had King's and Ricketts' 17,000; then he had Banks' 10,000—40,000; a great many more than I supposed. Forty thousand men, so says the learned Recorder, and that he ought to have made an attack. Well, yes; if he had 40,000 men, I agree that he ought to have made an attack. But, when it is necessary for the Recorder at this late day to resort to such marvelous calculations, is it not a pretty clear abandonment of the case as it always stood before and as we think it stands now. Why bring into this case all this rubbish about Banks? Was Banks under the command of Porter? Why didn't Pope, anxious as he was to have Porter's conviction stand in former years, make that suggestion? Why didn't the Judge-Advocate-General, reciting to the President all the evidence there was against Porter, say anything about Banks? That is the triumph of the Recorder's ingenuity; that is a new invention, and, I think, a weak invention of the enemy. General Banks (says the Recorder) was at Bristoe or Kettle Run. There has been a quite a deal of dispute and discussion, raised by him upon the evidence of Professor Andrews, and of his superior officer, General Gordon, as to the precise point where Banks was, whether at Bristoe or at Kettle Run. I don't know where he was. The Recorder says it is quite manifest that it was not Porter's force, but it was a brigade of observation from Banks' force, sent out half a mile or a mile from Bristoe, that caused the transportation of Wilcox's force over to their right wing in the afternoon of the 29th. But is it not too obvious for dispute that it was some movement of Porter's 10,000 men close upon the enemy, so close that Longstreet would not let Lee attack, although Lee wanted to attack, that dictated to them that precautionary transfer of Wilcox? If that was not sufficient cause for transferring Wilcox over there with his three brigades, how was the advance of a single brigade of observation, away down within a mile of Bristoe, cause for the transfer of Wilcox? The Recorder say the enemy in that movement was waiting for something to turn up. Well, something had already turned up. Porter had turned up, and was there with his 10,000 men close upon them. It was undoubtedly some threatening movement

upon Morell's part; something done, or apparently threatened to be done, that called for that transfer. So I do not think it worth while to discuss that question any more.

The character of the position at Dawkins' Branch, held by Porter for offence and defense, is proved by the maps and surveys, and the testimony of Warren, of Morell, of Sykes, and others. Did the former court-martial understand that? The maps that were before them show that they did not. For all that they knew, Porter, wherever he was, had nothing but the clear open country before him, without a single rebel soldier intervening between him and Jackson's right wing. On their theory, an attack was just as practicable as it is upon the Recorder's theory, as evidenced by the map which I have been enabled to incorporate into my argument, because there was nothing to prevent his attacking. Now, here is this new fact of the introduction of anywhere from 14,000 to 25,000 men absolutely commanding and closing the way. They outflanked him on his left and they outflanked him on the right, clear away to the Warrenton turnpike. Now, where is the soldier—we challenge him to come forward—who will say that, under these circumstances, General Porter ought to have made an attack? General Pope does not dare say so. If he could have said that, he would have been here to say it; he would not have waited for any subpœna; if he, as a soldier, could have demonstrated to you, as soldiers, that Porter, in that situation, ought to have attacked, he would have come, because he is anxious to support this prosecution, and keep General Porter under this brand of infamy which he has laid upon his head. No; I don't believe there is a soldier in this or any other country who dares to come and say hat Porter, under those circumstances, should have made an attack.

Then what else is there? There is the difference of position. I speak not now of the ignorance of the court-martial of the ground which has been so clearly laid down before this Board. I speak now of the confessed difference as to Porter's position, the relative position of Porter to the right wing of the rebel army as it was then believed to be and as it is now demonstrated to have been. It is involved in the question of the then supposed absence of the Confederate force which we now know, and was then by Porter asserted, assuredly to have been present between Jackson and Porter. They thought, and all thought apparently—McDowell certainly thought—that Porter was much nearer the Warrenton turnpike than he was. They all thought that Porter had reached the second run that crossed the Manassas and Gainesville road, one mile in advance of where he was. The maps show it. The sworn statements show it. And then they thought that he was behind the right wing of the rebel army, and very near to it; that there was nothing there but Jackson's force, as has been demonstrated to you over and over again—nothing there but Jackson, and that there was no pretense of execution on Porter's part of his recognized duty, the situation being what they supposed it was, of going in, orders or no orders, and attacking the right flank and rear of Jackson's force.

WAS A BATTLE "RAGING" ALL DAY?

There was another thing. The court-martial believed, and it was so sworn, that there was a battle raging all day in his plain sight and hearing Well, was there? You all know about that now. The Recorder called a host of witnesses to prove that there was a battle. It has enabled us to develop exactly the situation. There was not a battle raging with continuous fury from daylight until dark, as Pope, in his dispatch of the

next morning, asserted. There was a series of successive spurts, as Heintzelman said; there were skirmishes all along the line from just below the Warrenton pike up to Sudley Springs and Sudley Church. Was there no battle? Why, yes; there were lots of them. Every regiment, apparently, and every brigade, had a battle of its own. But they were no more connected than if one had been in Maine and another in Florida, and the rest in interlying States. There was no support of one attack by another attack. Let me read what General Schurz said upon that subject. He was there; he was engaged in it. Heintzelman says there were successive spurts. General Schurz says:

> If all those forces, *instead of being frittered away in insolated efforts*, had co-operated with each other at any one moment after a common plan, the result of the day would have been far greater than the mere retaking and occupation of the ground we had already taken and occupied in the morning, and which, in the afternoon, was for a short time at least lost again.

We have prepared, and will give you, a synopsis in print of what these successive spurts were, where they were, and when they took place. It demonstrates that there was no continuous battle, and they account for the fact that General Porter, who, you will remember, was left alone, without a word from General Pope, all this time, never heard anything but artillery firing. The Recorder says, "O, yes, he did." General Marshall, in charge of his skirmish-line, makes very strong statements of seeing from that skirmish-line, on the other side of Dawkins' Branch, the rebel army and Pope's army in fight, moving backwards and forwards, heard their yells, and that there was no man in our force who did not feel assured that Pope's army was being driven from the field. General Marshall stated that. I have no doubt that, so far as he was concerned, it was entirely true. There is not the least evidence that he made any such statement to General Porter. But what was it? He does not fix the time on his first examination; but on this new trial he does. What was it? What conflict was there that day that answered all these conditions that could possibly be seen from any ground in the neighborhood of Dawkins' Branch? It was the fight between King's division and Hood, when King was thrust down on the turnpike just at dusk. There is not any other fight that day, on that field, that could possibly have been seen or heard from that part of the country, that could answer the conditions described by General Marshall, and that does answer exactly to them. Mr. Maltby tells me, from a very careful inspection of the record, that, until that fight with King's division, on no part of the line was there, at any time, a larger force than eight regiments concerned in any one of these skirmishes or conflicts. There was a great deal of slaughter, undoubtedly. What principle it was conducted upon no historian has ever yet stated. We have a promised history of Colonel Smith's, which may probably explain it, but there never yet has been any explanation of that method of warfare. Well, I have one which I will give you presently. I think it was conducted upon the general laws of war as laid down by General Pope when he took command of the army; upon the principles of attacking whenever you see anybody to attack, without regard to the circumstances or the consequences, exactly according to the military code of the Irishman at Donnybrook fair.

But, now, what is the real fact as to its being a continuous battle, within sight and hearing of General Porter, and raging all day? We have produced the evidence of every man in his division who is worth believing that until General Marshall saw the fight between Hood and King they saw nothing. They heard only artillery firing. And there

was General Porter awaiting news from Pope and McDowell. The news from McDowell that he got, said that all went well with him towards Bull Run. It didn't go well anywhere else. I suppose that what Porter thought was that McDowell had got in there and formed a connection. The evidence shows that King, or rather Hatch (as King was absent), marched up the Sudley Spring road, going to and fro on contradictory orders from Pope and McDowell, and that he did not get into any action until this disastrous run on the pike, when he was rushed down through all the other forces at about sunset or after. I suppose that a corps commander, as I have had occasion to say on this subject, is bound to take notice of the situation, and if he was aware of circumstances and facts wholly unknown to his commanding general at the other end of the line, he was bound to act upon what he saw before him, was he not? Now, was there any time that day when he ought properly to have attacked, and when it would not, on the contrary, have been a fatal and stupid blunder, for which he would have been grossly culpable, and chargeable with all the destruction of life that would have been occasioned, if he had made an attack—was there anything known to him that would have justified the sacrifice of his corps by an attack that day? We know now that if he had sacrificed his whole corps by the blunder of an attack, it would not have afforded any relief to Pope's army. There is a demonstration of this, as it seems to me, in this case that the whole world would be content with, in confirmation of Longstreet's testimony, that it was Porter's presence there that prevented an attack by Lee that day. And what is the demonstration? What happened next day when Porter was withdrawn by the orders of General Pope from this position? What is the evidence? What is the irresistible conclusion from the proofs as to what happened on the 30th? Why, that it was only Porter holding on to where he was against every threat and every doubt that prevented on the 29th the slaughter that was consummated on the 30th. What could have justified Porter in withdrawing his force from there on the morning of the 30th but the positive orders of General Pope, who still remained, or claimed to have remained, in absolute ignorance of the intervening situation.

Remember that day of the 30th. When General Pope withdrew General Porter's force and brought it up with him to Groveton, he could not believe, Reynold's and Porter together could not convince him, that the rebel army, under Lee and Longstreet, was there. Had not he said in his dispatch of the previous day that they were coming at such a rate as would bring them in by the night of the 30th or the 31st? No, he could not believe that the whole rebel army was then already there. He said they were in full retreat even then, that morning of the 30th. He launched his army upon them supposing that they were in full retreat, when they were there in that fortress, that impregnable fortress, upon the Independent railroad cut, and thence stretching away upon these heights down to the situation where Porter had left them that morning. Well, you know what slaughter took place on the 30th. You know it was when Porter was withdrawn from the position which on his judgment he had maintained the day before. It seems to me that the truth as to the situation of the 29th, and the propriety of Porter's conduct on the 29th, are demonstrated by what appeared to follow on the 30th, when, contrary to his own judgment, he was withdrawn from this fortified position on Dawkins' Branch, which had up till that time held the main force of the rebel army in check, and the whole Federal force was huddled together on the inside of the circle in front of the Independent

railroad cut, and upon the successive heights, beginning with Douglas height and extending down to the Manassas and Gainesville road, all along which the rebel army was intrenched.

At this point, if the Board please, let me call your attention specially to two maps, one called Map No. 4, showing what we claim to be the positions of the respective forces during this time which is covered by these general specifications, under the second charge, and irrespective of any specific order to attack, showing what we now know to have been the situation, and what General Porter then substantially believed to be the situation. That map has been criticised, and unjust reflections cast upon Captain Judson in regard to it. So I will beg leave to state the facts in regard to it. The map itself is one of the Government maps made for this case, made by General Warren and by Captain Judson—the great map from which this is reduced. When the evidence was all in substantially—the evidence of those positions especially upon which we rely, we desired General Porter to have a map, that soldiers would understand, prepared, depicting the respective positions of the Confederate and Federal forces, from 6 o'clock until 12 on the 29th. Captain Judson was employed by him personally, at his own expense, outside of his official time—that is, not involving his official time—to do what? To make these positions? No. Simply to project them upon the map as given to him from the evidence. General Porter and his counsel, from the evidence, defined the positions, and we believe and are certain that they will be sustained by all the evidence in the case that is worth considering. What Captain Judson did in that matter I cannot see the least impropriety in his doing, any more than if our learned friend, the Recorder, is employed, as I hope he often is, to try and argue cases at private expense for some party when the Government does not require his services. There is no time now to discuss these positions. Whether they are right or not this Board will have to determine. The only point of conflict appears to be in respect to these movements sworn to by Sigel and Schenck in the neighborhood of the Warrenton pike, which took place on the noon and afternoon of the 29th. We believe these positions fixed upon this map to be true, although they refer you not to the original, but to the altered time of the movements, as stated by Sigel and by Schenck. [This map has already been referred to as Map D.]

Sigel alters his testimony from his first statement. If you look at his second statement, you will find that it substantially accords with these positions. If you will take the time stated in Heintzelman's diary for the movement by Reno, and then take the testimony of the only man from Reno's force who has been examined, the only man of substance, Stevens, and then take Benjamin's testimony, and that of General Reynolds, as it stands in the old record, you will find that they all fully substantiate the testimony of the Confederate generals, and accord with these positions. But, in the view we take, it matters very little for the purpose of these general charges that I am now considering exactly where the force of Longstreet was, if only it was in such a position that it could and did command these heights on the other side of Dawkins' Branch, and could reach them before General Porter could. And to accompany the map just produced, I offer another map prepared in the same way, showing what happened on the 30th, and I believe that is the last map that I shall ask to have incorporated in my argument. This probably puts to the test the wisdom of Porter's course on the day before. (Map shown to the Board.) *There* (on Map No. 4, Map D) are the forces as they were substantially from twelve to six on the 29th.

How is it possible that, with Porter's force where it is thus shown to have been, this Federal force under Pope could be destroyed?

Here on Map No. 6, of the 30th, is the situation when, by Pope's orders, General Porter was drawn over into the very center of the circle formed by the Confederates, whereby the Confederates were enabled to advance unobstructed to their final positions as here shown and surround and slaughter our forces as they did upon the 30th.

I suppose that this Board can never forget the touching testimony of General Warren as to the complete and hopeless slaughter of his entire force, when this position as depicted on this map was consummated.

That event came about by an abandonment of what General Porter had deemed a wise position, and had maintained against all hazards and doubts the previous day. [This map of the position on the 30th will be found in the Appendix as Map H.]

DISPATCHES OF THE 29TH.

Now, if the Board please, the Recorder has had a great deal to say in respect to the dispatches that passed between General Morell on the 29th and General Porter. I do not propose to weary the Board with a reconsideration of these. That has been done in the statement presented by Mr. Bullitt, and most carefully perfected by him.

These dispatches show no inconsistency; they fully explain the much complained of message to McDowell and King, on the strength of which Porter was convicted of retreating. Now there are some things to be said in regard to these dispatches. General Porter remained at the front after McDowell left him. McDowell did not go until somewhere between twelve and one o'clock; that is certain. Porter remained a long time after that at the front, and came to the rear, and established his headquarters at Bethlehem church, somewhere from two to three o'clock, probably at three o'clock. These written dispatches between him and Morell must have begun about that hour. I do not suppose there was any need of written dispatches when both were at the front. It is not likely that we have all the dispatches. If we could have all that General Porter wrote that day, if none were withheld from us by the prosecution, there would not be a single circumstance in all the details of that afternoon left unexplained. If we could have the dispatch that General Porter sent to General Pope by Weld; if we could have the other dispatch that he sent to General Pope in answer to the 4.30 p. m. order, that came by Douglass Pope, explaining the situation then in regard to the force in front of him, in regard to the time, showing the exact time when that was received, we should have everything. But it does seem to me that those dispatches now before you tell substantially the whole story, and make out a perfect case, under all the charges, in respect to the conduct of General Porter on the 29th.

The Recorder, for some reason or other, has seen fit to say that Porter's headquarters were two and five-eighths miles from the head of his column. Well, if it were so, I don't know that there would be anything wrong, if his column were two and five-eighths miles long; but unfortunately for the statement his column was only a mile and three-quarters; Morell at one end of it, and he at the other. I think you will find it admitted by Judge-Advocate Holt, on his written argument, that Sykes, who was with Porter at his headquarters, was in the proper place. I suppose that is an admission that General Porter was in his proper place, where he could not only command his whole force in front of him—

where he could command his own force, and get the promptest intelligence of everything that was going on in front, and at the same time be in a situation to communicate with Generals McDowell and Pope, and to receive the messages that General Pope did not send him. General Lee, it seems, had his headquarters in the rear of his force, on the 29th and 30th. General Pope started out in the morning, with his headquarters at Centreville, eight or ten miles away, and did not come on the field until after one o'clock, and then he established his headquarters a little farther from his foremost force than General Porter was from his. General Pope said that he was in the presence of the enemy when he was at Centreville, so that I do not think there is any difficulty in this matter of the distance of General Porter's headquarters from his front.

VALUE OF GOVERNMENT TESTIMONY—GENERAL M'DOWELL.

The whole case, so far as the facts go, has now been completely disposed of. There is not a rag left of the government case against General Porter; and yet there is something that remains. There are the opinions of two witnesses, who, if their opinions were entitled in this particular case to weight, ought to receive great consideration. Those are the opinions of Generals McDowell and Pope. What I propose further to say in respect to them, to complete this review of the affairs of the 29th, is, that General McDowell and General Pope have placed themselves in such a position before this Board, that you must utterly reject their opinions when given adversely to General Porter.

About General McDowell enough doubtless has already been said. The fatal mistake that he made on the former trial, or that he alleged was made, was in allowing his testimony as to what he said to Porter to be construed into an order to make an immediate attack with Porter's whole force on the right flank and rear of the enemy in front of him. He claimed this time, and said, that he didn't mean any such thing; he didn't mean that General Porter should have done anything more than we have fully proved that he did do. Well, I think that should have removed General McDowell's evidence, and the weight of his opinion, if there is a shred of his opinion still left in the case, should have removed it all. But I must call attention to two or three circumstances in respect to General McDowell which would wipe out, as it seems to me, from the case, the weight of his opinions, because of bias and hostility from some cause, I don't know what, to General Porter. Let us see. In 1870, I think it was, he, in answer to the petition or application of General Porter to the President of the United States for a reopening of his case, prepared for circulation and distributed certain evidence, as he called it, to counteract that claim. What was it? It was an account by General Jackson of the battle of the 30th, but purporting to be of the battle of the 29th. With what object? To show that General Porter must have known that there was a fierce contest going on between the Federal troops and the Confederate troops at Groveton. Well, it now so happened that that account of General Jackson related not to the 29th, but on its face related to, and purported to relate to, the 30th. And the worst part of it was, that the ferocious Federal onsets referred to by Jackson, which were intended to be a demonstration of Porter's knowledge on the 29th, from his distant position at Dawkins' Branch, that there was a furious battle raging, were Porter's own fighting of the 30th. It was his impetuous attack; it was his brave troops of the Fifth Army Corps on the 30th that made such a demonstration—such onslaughts, such irresistible attacks upon Jackson's front, that he was compelled to

call for reinforcements, and that was put forth to the public as a demonstration that Porter, in his distant position on the day before, must have known that that very state of things was going on then, and thus to find cause to condemn his inaction on the 29th, the day before.

Well, the question is as to General McDowell's purpose in this. I am going to read to you Jackson's account of what then happened on the 30th, because, with that map of the 30th before you, it can be more easily followed. You know what took place, and you know who did the great deeds of that day. As General McDowell now admits, it was General Porter and his troops that bore the brunt of that fight. Now, the question is whether General McDowell, who was charged with the superintendence of that whole work of the 30th—who was charged with the whole business of the pursuit—in the first place, whether he ever read this, which I hope he never did; and if he did read it, whether he could for a moment have remained of the impression that it referred to the 29th. This is Jackson's account of that fight, and you will see that nothing approaching this or anything like it happened on the 29th:

After some desultory skirmishing and heavy cannonading during the day, the Federal infantry, about four o'clock in the evening, moved from under cover of the wood, and advanced in several lines, first engaging the right, but soon extending its attack to the center and left. In a few moments our entire line was engaged in a fierce and sanguinary struggle with the enemy. As one line was repulsed another took its place, and pressed forward as if determined, by force of numbers and fury of assault, to drive us from our position. So impetuous and well maintained were these onsets as to induce me to send to the commanding general for re-enforcements; but the timely and gallant advance of General Longstreet, on the right, relieved my troops from the pressure of overwhelming numbers, and gave to those brave men the chance of a more equal conflict. As Longstreet pressed upon the right, the Federal advance was checked, and soon a general advance of my whole line was ordered. Eagerly and fiercely did each brigade press forward, exhibiting in parts of the field scenes of close encounter and murderous strife, not witnessed often in the turmoil of battle. The Federals gave way before our troops, fell back in disorder, and fled precipitately, leaving their dead and wounded on the field. During their retreat the artillery opened with destructive power upon the fugitive masses. The infantry followed until darkness put an end to the pursuit.

An exact description of the transaction of the 30th, of which General Porter bore the brunt. Now, is it possible for General McDowell, procuring that, publishing it, putting a heading on it that it referred to the transactions of the 29th, to have read it and not seen at once that it referred not to the 29th, but to Porter's fight, as we may well call it, of the 30th? I do not wish to throw the least discredit upon any general; I am only speaking as I have a right to speak of what stands recorded here, and to speak of the weight to be given to General McDowell's opinion, as adverse to General Porter's. If it had stopped there it would have been bad enough. But what more have we? Why, when that came out, Colonel Smith, who seems to be a deluded but a reasonably truthful witness, at once protested that it was not true; that that was a mistake; that it referred not to the 29th, but to Porter's fight of the 30th. Well, the question was raised, and it became a public, bruited, agitated question among military men. What happened? That question came to General McDowell's ears. What should have happened? I suppose fair play is a rule among soldiers as it is among civilians. Here was this report gotten up by General McDowell, circulated by him for the purpose of thwarting Porter's application for a rehearing, which necessarily must have been to his infinite damage and prejudice. The question was publicly raised whether General McDowell had not made a mistake in his dates—whether he had not erroneously published the events of the 30th as the events of the 29th. I should suppose that the

first instinct of a soldier in such a case would have been to find out whether he had made a mistake or not. It would be the first impulse of anybody outside of the Army, and it seems to me that it would be of every man in the Army. Well, now, what did General McDowell do? Knowing that the question was agitated, and that he was suspected of having made this mistake, to the great damage of his brother soldier, who was suffering under this undeserved ignominy, what did he do? He did nothing. He let it go uncorrected. Why? Now, do not let me do him any injustice. Let me show you his own words. Why did he let it go uncorrected? I read from page 768 of the record:

Question. Now, when this doubt was raised, whether it did, in fact, refer to the 29th or the 30th, did you take any pains to find out?

Answer. I did not; but the "pains" were taken in that being sent on to Washington, to see whether it was a correct extract, and they said it was.

Question. Did it occur to you then, that if this mistake had been made, and it, in fact, referred to the 30th, and not to the 29th, an injustice had been done to General Porter, which might be corrected then?

Answer. You must understand, that up to within a few minutes, I never knew what I have since admitted to be the fact, that that statement did not refer to the 29th.

Question. But when it did become a matter of question, whether it referred to the 29th or 30th, you did not take any pains to find out which it did refer to?

Answer. No, sir.

Question. Did it occur to you, at that time, that if it was a mistake, an injustice had been done to General Porter by that, which might, and should then be corrected, at that time?

Answer. No, it did not, *because I did not think it my province to do it.*

Not his province to correct an error which he himself had made to the prejudice of another soldier, who was suffering under this ignominy! It cannot be that he wants fair play for General Porter. It cannot be, that any opinion that he expressed ought to be for one moment considered. There is one other little matter, in respect to General McDowell, to which I call your attention in that same connection, although it seems to me that what I have just shown is enough. That is fatal, is it not, to the impartiality of any opinion of his involving the conduct of General Porter?

GENERAL POPE'S TESTIMONY.

Now I come to General Pope, whose opinion is so much relied upon by the prosecution, and, in fact, his is now the only remaining opinion. I suppose it may fairly be said to have been abandoned by his contemptuous refusal to come before this Board and support it. But, understanding that it may be claimed differently, let us see how he stands. It seems to me that there is exhibited upon this record a deadly hostility on his part to General Porter, and a confession by him of personal interest in the question of Porter's guilt or innocence; and there is something more exhibited, if I understand the matter right. He has a most peculiar congenital defect; I mean his way—constitutional with him and peculiar to him—of looking at things and stating things; his method of stating the truth, if that is the proper word. He will tell the biggest kind of a "truth," that is out of all relations, not only with all truths known to other people, but with his own truths as he has seen them and stated them the day before. Now, if that be so, his opinion certainly ought not to be regarded as of any great force. In respect to that, I shall be under the necessity of calling your attention to only a few instances. There is a disease called "color blindness," when a man cannot distinguish one color from another: when he will look at the red diamonds of a colored window, and say that they are green, or at a yel-

low light, and declare that is blue. It is no fault on his part. It is a natural, inherent, constitutional defect. So it seems to me that there is such a thing as blindness to the truth, and inability to recognize the existing relations of things. That seems to be the infirmity of this general. Let us see—he did declare, did he not, in the presence of General Ruggles, on the 2d of September, that he was entirely satisfied with all of General Porter's explanations in regard to these much-complained-of matters. He met him cordially at Centreville, in the presence of the witnesses, General Webb, and General Green, and General William F. Smith. Now, that would seem to be a pretty strong contradiction of all his opinions and charges before. But, as to this natural infirmity of his, I want to call the attention of the Board to certain written statements. At page 234 of the court-martial record is his account of the battle of the 29th. I will only read one sentence. It was written on the morning of the 30th, at 5 a. m.:

> We fought a terrific battle here yesterday with the combined forces of the enemy, which lasted with continuous fury from daylight until after dark, by which time the enemy was driven from the field, which we now occupy.

If he did not know anything of the presence of Longstreet, it is a very curious thing to find here a statement that he had been fighting against the combined forces of the enemy; and if he knew that, as he swore upon the court-martial, he came upon the field about twelve or one, and practically put a stop to hostilities until about four, it is a very remarkable thing that on the next morning he saw the truth to be in this way:

> We fought a terrific battle yesterday with the *combined forces of the enemy*, which lasted with continuous fury from *daylight until after dark*.

Then, at 9 p. m. on that day he wrote another dispatch, which is contained in General Porter's opening statement, at page 101. You know the facts of the battle of the 30th, that it was brought on by an assault which General Porter was directed under General McDowell to make, and that the assault was directed upon the assurance that the enemy were flying and in full retreat. Well, they made an assault. They were almost cut to pieces. Blood flowed like water. Thousands of brave men perished, and this is the account that General Pope gave of it that same night, 9.45 p. m., from Centreville:

> We have had a terrific battle again to-day. The enemy, largely re-enforced, *assaulted our position early to-day*. We held our ground firmly until 6 p. m., when the enemy, massing very heavy forces on the left, forced back that wing about half a mile. At dark we held that position. Under all the circumstances, both horses and men having been two days without food, and the enemy greatly outnumbering us, I thought it best to draw back to this place at dark. The movement has been made in perfect order and without loss. The troops are in good heart, and marched off the field without the least hurry or confusion. *Their conduct was very fine.*

That refers to Porter's troops especially.

> *We have lost nothing, neither guns nor wagons.*

Well, General Ruggles, his aide-de-camp, who was required to pen this dispatch for him, says, at the time it was written:

> "General, I saw some guns lost, I saw some wagons lost. You are mistaken there, are you not?" He said, "Well, write it. We have lost nothing, neither guns nor wagons!"

Then he comes to Washington and is stung to madness by the telegrams upon which the Recorder has relied so much, and that madness, as it seems to me, has continued until this day.

Next I want to call your attention to his report of September 3, at

page 1116 of this record. That is one of the most remarkable manifestations of this peculiarity of General Pope that I have ever found. We know exactly now the orders that General Pope gave on the morning of the 29th. The history of this report is that it was written for the purpose of laying the foundation for the prosecution of delinquent officers, as claimed or stated in his report to the Committee on the Conduct of the War. They wanted the actual truth, and here he states it, as he *then* saw it, speaking of what happened on the morning of the 29th. You know what the orders were then? There was a written order to Porter to march upon Centreville at daylight. Then a verbal message, followed by a written order for him to march upon Gainesville, and then the joint order. Now, here is the way General Pope states it:

I also instructed F. J. Porter, with his own corps and King's division of McDowell's corps, which had for some reason fallen back from the Warrenton turnpike toward Manassas Junction, *to move at daylight in the morning upon Gainesville along the Manassas Gap Railroad,* until they communicated closely with the force under Heintzelman and Sigel, *cautioning them not to go further than was necessary to effect this junction,* as we might be obliged to retire behind Bull Run that night for subsistence, if nothing else.

It shows also his construction of what he got jumbled up here with the joint order cautioning them not to go further than necessary to effect this junction. Did the Recorder ever see that?

Porter marched as directed, followed by King's division, which was by this time joined by Ricketts' division, which had been forced back from Thoroughfare Gap by the heavy forces of the enemy advancing to support Jackson. *As soon as I found that the enemy had been brought to a halt, and was being vigorously attacked along Warrenton turnpike, I sent orders to McDowell.*

Now, here are two orders, which nobody else has ever heard of.

To advance rapidly on our left, and attack the enemy on his flank, extending his right to meet Reynolds' left, and to Fitz-John Porter to keep his right well closed on McDowell's left, and to attack the enemy in flank and rear, while he was pushed in front. This would have made the line of battle of McDowell and Porter at right angles to that of the other forces engaged.

Can you conceive of a general who had commanded three or four days before, and had issued these written orders which we have been considering here, that he should state it in this way, unless he was suffering from the disease which I have imputed to him?

POPE'S REPORT OF JANUARY 27, 1863.

Then what is the next? His official report, made to the government, and withheld, for some reason or other, from publication, until the evidence in General Porter's case was all in. There are some rousing statements of "truth" there to which I would like to call the attention of the Board. Referring to the 29th, on page 19, he says:

I sent orders to General Porter, *whom I supposed to be at Manassas Junction, where he should have been in compliance with my orders of the day previous, to move upon Centreville at the earliest dawn.*

Well, that whole history has been explored, and nobody but General Pope has ever known of any order to General Porter that day, the 28th, but *to stay at Bristoe until he was wanted,* and it was at Bristoe that he was ordered to move upon Centreville.

On page 20:

I also sent orders to Maj. Gen. Fitz-John Porter, at Manassas Junction, to move forward with the utmost rapidity with his own corps and King's division of McDowell's corps, which was supposed to be at that point, upon Gainesville, by the direct road from Manassas Junction to that place. I urged him to make all speed that he might come up with the enemy and be able to turn his flank near where the Warrenton turnpike is intersected by the road from Manassas Junction to Gainesville.

And at page 23:

It was necessary for me to act thus promptly and make an attack, as I had not the time, for want of provisions and forage, to await an attack from the enemy; nor did I think it good policy to do so under the circumstances.

During the whole night of the 29th, and the morning of the 30th, the advance of the main body under Lee was arriving on the field to re-enforce Jackson.

Think of this. Months after the events he still insists that the main army of Lee came through Thoroughfare Gap during the night of the 29th, and the morning of the 30th, to get on to the field.

Every moment of delay increased the odds against us, and I, therefore, advanced to the attack as rapidly as I was able to bring my forces into action. *Shortly after General Porter moved forward to the attack along the Warrenton turnpike.*

This is the 30th. See how he recognizes the truth on the 30th.

And the assault on the enemy was made by Heintzelman and Reno on the right. It became apparent that the enemy was massing his troops, as fast as they arrived on the field, on his right, and was moving forward from that direction to turn our left, at which point it was plain he intended to make his main attack. I accordingly directed General McDowell to recall Ricketts' division immediately from our right and post it on the left of our line with its left refused.

Now, here—

The attack of Porter was neither vigorous or persistent, and his troops soon retired in considerable confusion.

Certainly the mind that penned that sentence, knowing and seeing what he did of Porter's conduct and of the conduct of his glorious troops of the Fifth Army Corps on the 30th, is suffering under some serious perturbation. Now, the report to the Committee on the Conduct of the War made by General Pope, at page 190, has another startling "truth." It is, however, the one which shows his hostility to Porter. His claim of the authorship of the prosecution, and his claim for reward from the administration for having carried it successfully through, show, as I think, his infinite bias against General Porter. And the map which is attached to that report must now be taken, in view of the facts as they now stand, as a confession of his bewilderment or ignorance, to state it in the mildest way, of the transactions of the 29th, when he testified on the former trial. I want to read to you a letter that he wrote in answer to General Porter's appeal, addressed to General Grant, recognizing the fact that General Porter is trying to get a rehearing:

HEADQUARTERS THIRD MILITARY DISTRICT,
Atlanta, Georgia, September 16, 1867.

GENERAL U. S. GRANT,
Washington, D. C.:

GENERAL: *As I am one of the principal parties concerned in the case of Fitz-John Porter*, and as I learn that he is in Washington City seeking a reopening of his case, on the ground that he has come into possession of testimony since the close of the war which has an important bearing on the subject, and as I suppose it is not unlikely that a commission may be ordered to examine that testimony, and report upon it, I consider it my duty, as well as my right, respectfully to submit to your attention, or that of any commission that may be ordered, the following remarks, for such consideration as they merit. * * *

I am, general, very respectfully, your obedient servant,

JOHN POPE.
Bvt. Maj. Gen. U. S. A.

Then follows an elaborate argument, a rehash of all the old errors that he committed five years before at the court-martial, which he adhered to then, as he has ever since, with the tenacity of a Bourbon who can learn nothing and forget nothing.

GENERAL POPE'S "BRIEF STATEMENT OF THE CASE."

His brief statement of facts made in 1869 is his next publication, and it is well worthy of a brief inspection. It is at pages 757 and 759 of this record. In the first place it undertakes to state the case against General Porter. It is in answer to another appeal by Porter to the President. In the first place it omits to state any charge or complaint of disobedience of the joint order.

It states this:

McDowell had marched in Porter's rear from Manassas Junction with his corps, but hearing, on reaching the forks of the road at Bethlehem Church, the sounds of a severe battle being fought at Groveton, passed the rear of Porter's corps, and following the road to Sudley Springs, brought his corps in upon the left of our line and immediately pushed forward into action.

Do you suppose that he believed that, unless he saw things through diseased optics? He then sets forth Porter's message to McDowell and King, incorporates that in his brief statement, and in it he omits the vital part of it as it was in his hands, viz:

I am now going to the head of the column to see what is passing and how affairs are going. I will communicate with you.

The whole spirit of this document is hostile. He repeats the old story about the delivery of the 4.30 p. m. order at five o'clock:

The delivery of this order to Porter at five o'clock, at least one and a half hours before sunset, and full two hours before the battle closed for the night, was proved on his trial; but the order was in no respect obeyed, and seems to have produced no effect upon Porter, except that instead of retreating to Manassas, according to his first intention, he only retreated part of the way—far enough to be out of sight of the enemy and out of danger.

Then certainly here is a most enormous statement of "truth" in view of the present facts. At page 760 in the brief statement:

That Porter did precisely what he wrote McDowell and King he intended to do was perfectly well known, of course, to every man in his army corps, and easily proved before the court-martial. It is impossible to believe that any man in this country possessed of the facts can be found so prejudiced as to justify such a transaction, or to ask a modification of the sentence against Porter. It is Porter himself who wrote the charges against himself, and whose own written testimony establishes his crime. It is impossible for any man, especially any military man, to imagine any excuse for, or any satisfactory explanation of, such conduct.

Then, on page 761, he publishes, as of the 29th, an extract from General J. E. B. Stuart's report, which shows that Longstreet was there in force.

In this extract, General Stuart states that before noon he had been informed of Porter's advance along the Manassas Gainesville road.

General Stuart then says:

The prolongation of his (Porter's) line of march would have passed through my position, which was a very fine one for artillery as well as observation, and struck Longstreet in flank. * * * Immediately upon receipt of that intelligence, Jenkins', Kemper's, and D. R. Jones' brigades, and several pieces of artillery, were ordered to me by General Longstreet, and being placed in position, fronting Bristoe, awaited the enemy's advance.

Upon this, General Pope asserts:

It will be observed, also, that when Longstreet was duly notified of his danger, and asked to send troops to resist Porter's advance, he sent only three brigades, viz, Jenkins', Kemper's, and D. R. Jones' (all he could spare, as will appear from Jackson's report), *and this was positively all the force ever in front of Fitz-John Porter from first to last*, placed there with no purpose whatever to attack, but, if possible, to prevent his advance.

Rather remarkable, in view of the clear proof of Wilcox's three brigades being transferred in addition, to withstand Porter. He pub-

lishes in this same brief statement an extract from Longstreet's report, which omits, however, a very important part of that report, cutting out a preceding sentence and giving the sentence immediately following that which would have set forth somewhat more, as other people understand it, and as it is now known, the history of the movements of that day. He left out this (showing Longstreet's presence and line of battle):

EARLY ON THE 29th *(August), the columns were united, and the advance to join General Jackson resumed.*

* * * * * * *

On approaching the field, some of Brigadier-General Hood's batteries were ordered into position, and his DIVISION WAS DEPLOYED ON RIGHT AND LEFT OF THE *turnpike, at right angles with it, and supported by Brigadier Evans' brigade.*

Three brigades, under General Wilcox, were thrown forward to the support of the left, and three others, under General Kemper, to the support of the right of these commands. General D. R. Jones' division was placed upon the Manassas Gap Railroad, to the right, and in echelon with regard to the three last brigades.

Having omitted these important sentences, General Pope proceeds to quote the subsequent portion thus:

* * * At a late hour in the day Major-General Stuart reported the approach of the enemy in heavy columns against my extreme right. *I withdrew General Wilcox, with his three brigades, from the left,* and placed his command in position to support Jones in case of an attack against my right. *After some few shots the enemy withdrew his forces,* moving them around towards his front, and about four o'clock in the afternoon began to press forward against General Jackson's position. *Wilcox's brigades were moved back to their former position.*

Then General Pope, assuming that General Wilcox's division of three brigades were the same as the three brigades mentioned by Stuart in the passage quoted from him (which they were not), and ignoring the fact that Jones, upon the right, was in command of a division, and that Kemper with his division was there also, and the fact that Wilcox and Hood, if needed, were within easy reach, exclaims:

It seems, then, that as soon as Porter retreated towards Manassas from this *overwhelming force, Longstreet immediately withdrew these brigades, and, joining Jackson's right, immediately pressed forward with them against that portion of our army concerning whose defeat Porter expressed such doleful apprehensions in his letter to McDowell.*

Then he incorporates what he got from McDowell, that extract from Jackson's report of the 30th, making it of the 29th, turning Porter's own guns against himself, and charging him with lying inactive at Dawkins' Branch all that day, although in full hearing of a great battle, that is to say, of Porter's own memorable attack of the 30th, which so nearly overwhelmed the rebel army of Jackson, until Longstreet came in obedience to his urgent call for re-enforcements. Here is an extract or statement of "truth" as of the 29th:

But Lee, according to the testimony of the chief engineer on his staff, *took breakfast that morning (i. e., the 29th) on the opposite side of Thoroughfare Gap, full thirty miles distant, and it was utterly impossible to re-enforce Jackson before a very late hour of night, long before which time the whole affair would have been ended.*

This taking breakfast on the opposite side of Thoroughfare Gap, full thirty miles distant, is one of the most astonishing statements that I have ever heard. Thoroughfare Gap is about six miles from Gainesville. There is a map published in connection with his report to the Committee on the Conduct of the War which seems to have some bearing on this statement of General Lee's taking breakfast on the other side of Thoroughfare Gap, fully thirty miles from Gainesville: a very singular thing, which ought to be explained by somebody. *Here* is Thoroughfare Gap; this is Centreville; and this map reverses the true positions of the gaps, and puts Thoroughfare Gap where Manassas Gap hould be, thirty miles to the west. That is one of the maps made and

annexed to General Pope's report to the Committee on the Conduct of the War. It is very strange that a man should read history wrong and geography wrong too. I cannot understand it. It seems to me that must be an accident. Of course General Pope must have known, as well as General McDowell, that the statement in Jackson's report, incorporated in his "brief statement" to refer to the 29th, did in fact refer to the 30th, and to Porter's glorious conduct on that day. Yet he insisted, and by-and-by I will show you that he insists to this day, that that is right. But General McDowell, when brought face to face with his error, conceded that he was wrong. General Pope not only still insists upon it that it is right, but still insists that it is no business of his to correct it if it is not right.

GENERAL POPE'S EXPLANATORY LETTER OR BRIEF STATEMENT.

Now I come to his letter of October 23, 1878, showing why he put out the brief statement. This is worthy of attention in considering whether he is an unbiased person in speaking of General Porter. It seems that some question had been made, and it came to his ears, about these extracts, and he publishes them again in a letter to General Sherman, dated October 23, 1878. He says:

Although General McDowell states in his testimony before the Board now in session in Porter's case that he made this extract and sent printed slips to me, I still think it proper fully to explain my connection with its subsequent use in the paper (brief statement) above referred to, and my authority for using it.

Then he states how he got it from the War Department and got it verified. But we know what that meant; that it was a verified extract from the book, but the extract which was verified, not giving the date, the date was put on by somebody else, viz, General McDowell.

Having thus called attention in the statement itself to Porter's assertion that the extract from Jackson's report referred to the 30th and not the 29th of August, 1862, and given my authority for using it, *and my belief that Porter was mistaken*, and an additional statement that the case was complete without considering the extract from Jackson's report; so that it was, and is, practically out of consideration. *I supposed, and still suppose, that I did everything demanded by fairness and justice.*

The "Brief statement," with the above note inserted at the bottom of it, was then filed in the War Department, and copies were furnished Colonel Schriver, General Townsend, and others, so that the note at the bottom has been known to them for eight years past, *and neither of these officers has ever suggested to me even that there was any mistake about them. The opinion of Colonel Smith and the assertion of General Porter are, therefore, left to be balanced against the certificate of General Townsend and the letter of Colonel Schriver, and whatever the facts may ultimately prove to be, I do not see what I have to do with it.*

But how are these mistakes of history to be corrected if the two men who got up that circular say when they are brought face to face with the glaring error, the one that "he does not think that it is his province to correct it," and the other that "he does not see what he has to do with it"? There is one singular fact in this letter which bears rather hardly upon General McDowell, as showing how unnecessary it was for General McDowell to come here and say that he furnished these statements to General Pope, when he procured them from the War Department in 1869. He says:

It is proper to say that the "Extracts" in question were sent me in 1867 from Washington, I do not know by whom.

That was two years before General McDowell went through the supererogatory work of furnishing them to General Pope; he had them already, and had been laying them by for future use against General

Porter. Then he has written various letters to General Belknap and the Comte de Paris, which are in evidence, full of these reassertions of the exploded mistakes against General Porter, and all testifying in the strongest manner to his absolute and undying hostility to Porter; which, as I have said, is also fairly deducible from the oral evidence in this case. There is nothing left adverse to General Porter but this opinion, and you can fairly estimate the weight that is to be given to it.

General Roberts has been cited. He is no longer living; but to show you how much weight is to be given to General Roberts' testimony, he is the author of this false and malicious libel against the Fifth Army Corps, which was contained in the fourth specification of the second charge against General Porter's corps and its commander in respect to the action of the 30th, which General Roberts, as a brigadier-general and inspector-general of General Pope's army, could not but have known all about. That specification is as follows:

Specification 4th. In this: That the said Major-General Fitz-John Porter, on the field of battle of Manassas, *on Saturday, the 30th of August*, 1862, *having received a lawful order from his superior officer and commanding general, Major-General John Pope, to engage the enemy's lines, and to carry a position near their center, and to take an annoying battery there posted, did proceed in the execution of that order with unnecessary slowness, and, by delays, give the enemy opportunities to watch and know his movements and to prepare to meet his attack, and did finally so feebly fall upon the enemy's line as to make little or no impression on the same, and did fall back and draw away his forces unnecessarily, and without making any of the great personal efforts to rally his troops or to keep their line, or to inspire his troops to meet the sacrifices and to make the resistance demanded by the importance of his position and the momentous consequences and disasters of a retreat at so critical a juncture of the day.*

That was too much even for the court-martial. General Roberts stands as the author, with his name subscribed to that statement of Porter's conduct of the 30th, probably about as gallant and determined a fight and series of charges as was ever made by an army corps in the American Army or any other army. How can you give any weight to the remnant of his opinion? So I leave that part of the case, stating that, against the solid facts that we have proved, it seems to me you can attach no value whatever to these opinions.

THE ANIMUS OF GENERAL PORTER.

Finally, a few words as to the *animus* of General Porter. On the present solid facts, this charge of evil *animus* seems to me to be not the least material. It never was resorted to even by Judge-Advocate-General Holt, except to throw in as a make-weight to determine the scales, which he thought were, upon the evidence, doubtful. But now it is apparent to all the world, and no longer doubtful, that Porter did his whole duty, no matter what his estimate of General Pope might have been. If his feelings were such as General Burnside testified to, that he entertained, in common with all the officers of the Army, or a great part of them, namely, a distrust of General Pope's ability to conduct a great campaign, and yet, notwithstanding that, he did his whole duty, the performance of his whole duty is all the more meritorious, is it not? But what was General Porter's *animus*? I shall not consume the time of the Board in developing all that is shown by the dispatches and telegrams of Porter, from the time of starting from Harrison's Landing, from the time that he first knew that he was to co-operate with and finally to join the army of Pope in Virginia. There is everything in those dispatches which is to his credit—sleepless vigilance, untiring activity, implicit obedience as an officer, evidenced by all the dispatches, by all the telegrams, by all the orders. I will not consume the time of the Board in doing it, but

I would like the Board to take these telegrams, these dispatches, covering the movements all the way from Harrison's Landing up to the 26th of August, where his telegrams are first called in question as offensive. They show that he did all that could become a gallant and brave general, as in all our previous history where he was concerned he had done. They do not indicate anywhere any hostility to Pope, or any purpose not to do his duty. They testify all the time that he was doing his duty to the utmost.

What were the relations in which he stood in sending these telegrams? To whom were they addressed? Were they telegrams for publication? Not at all. Were they orders to subordinates? Not at all. Were they for the public eye? Not at all. But General Burnside had requested him to keep him informed, as a means of communication with the President, of what was going on. Now, I challenge the doctrine of the prosecution in this case as to the relative attitude of corps commanders. I deny that they are not at liberty to criticise the movements of their superior general, to a superior or to the supreme source of all military authority. I agree that they must not criticise to subordinates; that they must not criticise in the public ear; that they must not so speak as to create disaffection. But has it ever been known, in any country, that subordinate generals might not send criticisms to headquarters, even upon the conduct of a campaign by their immediate commander? In what army has it not been done? In what country has it not been permitted? Why, the theory of the infallibility of the Pope, to question which is heresy, is now for the first time sought to be applied to military matters—they set up the infallibility of this Pope, and that all questioning of it is treason. That will not do. Even Napoleon, in the zenith of his glory, allowed criticisms upon himself, and of superior generals by those under them. It is a new theory in this free country, that because a man happens to be a major-general and a corps commander, he is tongue-tied, that he has lost all freedom of thought, all freedom of speech. A pretty good specimen of what a co-ordinate, if not a subordinate, commander can do in the way of criticism of a commanding general appears in General Pope's criticism to President Lincoln about General McClellan, which is contained in his report to the Committee on the Conduct of the War, at page 105; and as his authority will not be questioned here, I would like to read that. He says:

> In face of the extraordinary difficulties which existed, and the terrible responsibility about to be thrown upon me, I considered it my duty to state plainly to the President that I felt too much distrust of General McClellan to risk the destruction of my army, if it were left in his power, under any circumstances, to exhibit the feebleness and irresolution which had hitherto characterized his operations.

Well, I think that is a pretty good sample of the kind of criticism which is allowable. It seems to me that it is necessary to allow criticisms, for the safety of the army. Suppose that, instead of a great master of the art of war like General Pope, a great army had an incompetent commander, with skillful generals under him, the whole army might be destroyed if you take from them that power of criticism. Now, I undertake to say that Porter's allusions in these telegrams are all true, all perfectly justifiable: although the discreetness of sending them or making some of those remarks, knowing what General Pope is, might possibly be questioned. I have stated his relations to Burnside, and the object of sending the telegrams. It is true that Pope's whole campaign is not in review here: but something is in view which is referred to in these telegrams, and that much I must bring to the attention of the Board. It appears that General Pope took command in the sum-

mer, I think it was June or July of 1862, and began the formation of this Army of Virginia. He came from the West and imported new doctrines of military science, which certainly startled, if they did not shake, the confidence of all military men in the East; and as these telegrams of Porter, so much objected to, refer expressly to these new theories of war, I desire to bring the new theories of war once more to the attention of the Board. I refer to his famous introductory order of July 14, on page 278 of the Board Record. If such an order cannot be criticised, then General Porter was wrong in criticising it; if it cannot be ridiculed, it was wrong for General Porter to laugh at it. But I shall insist that even a military saint, if there be such a person, could not help laughing at it. This was the order which was proclaimed, not only to his own army, but to the rebel army, when he assumed command of the Army of Virginia:

WASHINGTON, *Monday, July* 14.

To the officers and soldiers of the Army of Virginia:

By the special assignment of the President of the United States, I have assumed command of this army. I have spent two weeks in learning your whereabouts, your condition and your wants, in preparing you for active operations, and in placing you in positions from which you can act promptly and to the purpose.

I have come to you from the West, where we have always seen the backs of our enemies, from an army whose business it has been to seek the adversary, and to beat him when found; whose policy has been attack and not defense. In but one instance has the enemy been able to place our Western armies in a defensive attitude. I presume that I have been called here to pursue the same system and to lead you against the enemy. It is my purpose to do so, and that speedily. I am sure you long for an opportunity to win the distinction you are capable of achieving; that opportunity I shall endeavor to give you. Meantime I desire you to dismiss from your minds certain phrases which I am sorry to find in vogue amongst you. I hear constantly of taking strong positions and holding them—

As Porter did on the 29th—

of lines of retreat and of bases of supplies. Let us discard such ideas.

There, I think, you see the source of his condemnation of Porter's acts of the 29th.

The strongest position a soldier should desire to occupy is one from which he can most easily advance against the enemy. Let us study the probable lines of retreat of our opponents, and leave our own to take care of themselves. Let us look before us and not behind. Success and glory are in the advance. Disaster and shame lurk in the rear.

Let us act on this understanding, and it is safe to predict that your banners shall be inscribed with many a glorious deed, and that your names will be dear to your countrymen forever.

JOHN POPE,
Major-General Commanding.

This was a public proclamation, made on the 14th of July. It was not only proclaimed to his own army, but to the army opposed to him. What did it promise them? It gave them an understanding of how he was going to act; it assured the enemy that there should be no more such conduct on the part of the Federal army as taking strong positions and holding them; that they would not preserve any lines of retreat, or maintain any bases of supplies; the only strong position he would look for would be the one from which he could most easily advance upon the enemy, by which, I understand, he means to be always upon the road; that he would always leave his own lines of retreat to take care of themselves; that he would never look behind him, because disaster and shame lurked in the rear. That is his proclamation. Was it merely for the purpose of buncombe, or was he going to act on this understanding? On that we have some light thrown in his report to the Committee on the Conduct of the War, which shows, as it seems to me, that it was

a genuine thing—a deliberate method of warfare—because eight days previous he had been examined as a witness by Mr. Covode, before the Committee on the Conduct of the War, at Washington, and when asked how he proposed to fight, he said:

At the same time I shall be in such position that, in case the enemy advance in considerable force towards Washington, I shall be able to concentrate all my forces for the defense of this place, which I propose to defend, not by standing on the defensive at all, or confronting the enemy and intrenching myself, but I *propose to do it by laying off on his flanks, and attack him from the moment he crosses the Rappahannock, day and night, until his forces are destroyed, or mine.*

By Mr. ODELL:

Question. Is it your design to act on the defensive alone?

Answer. *Not at all.*

Question. So that you mean to attack?

Answer. *I mean to attack them at all times that I can get an opportunity.* If I were to confront them with the force that I have, and go building intrenchments, &c., they could flank me on either side, and force me back without my being able to offer any resistance of any consequence. There is a possibility that they may send a large force this way, if the command of General McClellan be in a perilous condition, or where it can be held by an inconsiderable force, and prevented from coming out. They may do that, but I do not think it very likely that they will attempt to move on this place just now. But if they should come this way with a very large force, it seems to me that the only sort of defense of Washington I can afford, with the force I have, is *to lie off upon the flanks of their army, and attack them day and night, at unexpected times and places, so as to prevent them from advancing. It will be hard work, but I do not see anything else so likely to prevail against them.*

By Mr. COVODE:

Question. Would you not, in all these movements, feel embarrassed with the knowledge that while you are moving forward on the enemy, you are looked upon as the protector of the capital here?

Answer. No, sir; for I am fully convinced I am doing the best I know to effect that object. *It is not necessary, in my opinion, in order to protect the capital, that I should interpose myself between the enemy and the place itself; in fact, it would be the very worst policy to do so now*, for wherever I could put myself, they could place themselves between me and the capital, by attacking my flanks. *By laying off on their flanks, if they should have only forty thousand or fifty thousand men, I could whip them.* If they should have seventy thousand or eighty thousand men, I would attack their flanks and force them, in order to get rid of me, *to follow me out into the mountain, which would be what you would want, I should suppose.* They could not march on Washington, *with me lying* with such a force as that on their flanks. I should feel perfectly satisfied that I was doing the best I could with my force to dispose of them in that way.

These declarations had been already made and published when he took command of the Army, and it is the reference to this sort of thing in these dispatches of Porter's that has been so much complained of. We do not see the whole of this campaign, but we have certain glimpses of it which show that he acted upon this understanding and view of the art of war, and provoked the criticism, not only of General Porter, but of all soldiers. I invite your attention to the position at 7 p. m., on the 26th of August, to see how it was that Jackson got in behind him while he was "looking before and not behind." Pope's dispatch is contained in Porter's statement, at page 86, and it shows where these forces of his were posted. It is a dispatch from Warrenton Junction, August 26, 7 p. m., to General Porter:

Please move forward with Sykes' division to-morrow morning, through Fayetteville, to a point within two and a half miles of the town of Warrenton, and take position where you can easily move to the front, with your right resting on the railroad. Call up Morell to join you as speedily as possible, leaving only small cavalry forces to watch the fords. If there are any troops below, coming up, they should come up rapidly, leaving only a small rear guard at Rappahannock Station. You will find General Banks at Fayetteville. I append below the position of our forces, as also those of the enemy. I do not see how a general engagement can be postponed more than a day or two.

McDowell with his own corps, Sigel's and three brigades of Reynolds' men, being about thirty-four thousand, are at and immediately in front of Warrenton: Reno joins him on his right and rear, with eight thousand men, at an early hour to-morrow; Cox, with seven thousand men, will move forward to join him in the afternoon of to-morrow; Banks with six thousand is at Fayetteville; Sturgis, about eight thousand strong, will move forward by day after to-morrow.

There they were at 7 o'clock p. m. on the 26th of August, facing towards the Rappahannock, facing the enemy. At 12 o'clock that night in a dispatch from General Pope to McDowell in his official report, at page 234, we have this extraordinary state of things growing out of this policy of "looking before" and not "behind," and letting his lines of communications "take care of themselves." Jackson had, in fact, got through Thoroughfare Gap on the 26th, in the morning. That appears in Jackson's report, printed in the Board Record, at page 522. He had gone perhaps twenty miles and struck, and Pope knew nothing of it until he was informed by report next morning, when his whole army was still "looking before" across the Rappahannock; and Jackson, twenty-four hours previous, had slipped in behind him. This is dated August 26, 1862, at midnight, just at the very moment, as I understand, that Jackson was striking in his rear upon the railroad, between him and Washington:

General Sigel reports the enemy's rear guard at Orleans, to-night, with his main force encamped at White Plains. You will please ascertain very early in the morning whether this is so, and have the whole of your command ready; you had best ascertain to-night, if you possibly can. Whether his whole force, or the larger part of it, has gone around, is a question which we must settle instantly, and no portion of his force must march opposite to us to-night without our knowing it. I telegraphed you an hour ago what disposition I had made, supposing the advance through Thoroughfare Gap to be a column of not more than ten or fifteen thousand men. If his whole force, or the larger part of it, has gone, we must know it at once. The troops here have no artillery; and if the main forces of the enemy are still opposite to you, you must send forward to Greenwich, to be there to-morrow evening, with two batteries of artillery, or three if you can get them, to meet Kearney. We must know at a very early hour in the morning, so as to determine our plans.

JNO. POPE,
Major-General.

Now, there is an illustration of leaving lines of retreat to take care of themselves, and emphatic proof that disaster and shame lurked in the rear of this very movement. Stuart struck at Catlett's Station on the night of the 26th, throwing everything into confusion, and at daybreak of the 27th Jackson's force captured Manassas, the base of supplies, destroying an immense quantity of stores upon which the sustenance of Pope's army depended, and actually cutting off that army from communication with the capital, which he was defending by "laying off on the flanks of enemy." This appears by Stuart's report in the Board Record, at page 525; and Trimble, who was in that affair, puts it at 12.30 a. m. on the night of the 26th and morning of the 27th. There was an illustration of the practical working of his plan of "looking before" and not "behind"—of letting his lines of retreat and communication take care of themselves and of not caring anything about his bases of supplies. Then you have the illustration of the pursuit of Jackson to Centreville when Jackson was not at Centreville, and had not been there. Reno and Heintzelman were ordered to Centreville on the 28th and Porter on the 29th. There was an instance of studying the *probable* lines of retreat of the enemy. I claim that all the fighting on the 29th illustrates his method of attacking wherever he "could get an opportunity to do so," as he swore before Covode's committee that he intended to do; and his insisting that the enemy were running away on the 30th, and attacking them as if they were, is a specimen of his policy of attacking under all

circumstances and never standing on the defensive. Let me read you the evidence of General Patrick on the subject, at page 193, for it shows that this theory of attacking under all circumstances was carried out to the full. General Patrick found the enemy very speedily on that morning and the night previous.

I reported the condition of affairs, as they had been during the night and as they then appeared, that the enemy had come down the road here about where they lay during the night [north of Young's Branch], and that they had withdrawn to within the woods here [near Groveton]. My recollection is that it came out farther than that; that is, that it continued nearer toward the pike and made something of an angle here. I reported that the wood was full of rebs.

Question. On both sides of the pike?

Answer. Yes; but mostly on the south side. I was there twice. I cannot say at which time this occurred. I should think, however, it was the second time I was there. My instructions then were from General McDowell to go back. The conversation was between McDowell, Pope, and myself.

Question. You had better state it as it was.

Answer. Well, I cannot give the words.

Question. No: the substance.

Answer. The substance of it was, "You are mistaken. There is nobody in there of any consequence. They are merely stragglers." I gave the reasons, and I supposed, I believed, that there were heavy bodies in that wood; the fact that this column had come down in that way and must have fallen back in that direction, because otherwise Reynolds would have interfered with them. The direction was to go back and feel of them—put in my skirmishers on both sides of the road and see what there was there. As I got there some of Sigel's scouts, mounted, were there; they went in, and before getting up to the wood anywhere from the edge of the wood there was a pretty strong fire from what would seem to be a skirmish line poured out upon them, and they came riding back very hastily, and I remarked, "It was as I told you; the woods are full." In the mean time I was getting out the skirmishers to go forward, and I went up again to McDowell and Pope and reported this. I cannot say to which it was; they were both together, and one of them replied, "O, these Dutchmen are always seeing the enemy," referring to these scouts. "Now get off and get some coffee, and you will feel better natured, and then go back and throw out your skirmishers and pursue them with your whole command, for we can't afford to let them escape. We have got to bag them."

Question. Who said that?

Answer. They both used the expression, but McDowell was the one who used it especially to me.

Question. Did you make any reply?

Answer. I think I asked him, "Which side of the bag will it be?"

And in fact it proved to be the wrong side of the bag.

Was not that an instance of attack, because he would never assume a defensive policy? Well, now, with these glimpses of the method of the campaign, let us come to these telegrams that are so much complained of. At page 84 appears a telegram of August 25. It will be remembered that at that time General Porter was under General McClellan's direction. He telegraphs to Burnside, giving a full account of all that transpired: he was then in the advance proceeding up from the Rappahannock.

To General BURNSIDE:

Have you received my dispatches indicating my movements to-morrow? You know that Rappahannock Station is under fire from opposite hills, and the houses were destroyed by Pope. I do not like to direct movements on such uncertain data as that furnished by General Halleck. I *know he is misinformed of the location of some of the corps* mentioned in his dispatches. Reno has not been at Kelly's for three days, and there is only a picket at Rappahannock Station; and Kearney, not Banks, is at Bealeton. Reno and Reynolds are beyond my reach. I have directed Sykes to go to Rappahannock Station at five to-morrow, and will go there myself via Kelly's Ford. *Does General McClellan approve?*

Now, what harm is there in that? McClellan was his superior commander. Was it wrong for him to seek to have the approval of General McClellan? The next telegram that they complain of is that of

August 27, when General Porter had, as we claim, voluntarily joined General Pope, and made himself a part of his army. But whether voluntarily or not, it was the disconnecting from one army and attaching to another; and the thing complained of is, that he asked General Burnside to inform General McClellan that he had done it; that he might know that he was doing right. He did not ask for any advice from McClellan; he had no communication from or with McClellan; and it seems to me that, as a wise soldier, he informed General McClellan, so that he, Porter, might know that McClellan was informed that he was with Pope, and looking no further to McClellan for orders. Is not that the fair construction of this dispatch? Let me read it:

From ADVANCE, 11.45 *p. m.*, *August* 26. Received August 27, 1862.

Major-General BURNSIDE:

Have just received orders from General Pope to move Sykes to-morrow to within two miles of Warrenton, and to call up Morell to same point, leaving the fords guarded by the cavalry.

You see the vigilance which all these telegrams display, notwithstanding they contain these objectionable passages.

He says the troops in rear should be brought up as rapidly as possible, leaving only a small rear guard at Rappahannock Station; and that he cannot see how a general engagement can be put off more than a day or two. I shall move up as ordered, but the want of grain and the necessity of receiving a supply of subsistence will cause some delay. *Please hasten back the wagons sent down, and inform McClellan, that I may know I am doing right.*

Now, what harm there is in a commander of a corps departing from one army and coming, whether by orders from Washington or by his own voluntary act, to constitute a part of a co-operating army, sending back word that he had done so for the information of his former commander, nobody has yet undertaken to explain. They said it was looking to McClellan. Well, were not those circumstances under which it was proper for him to look to McClellan for the purpose I have indicated?

The next complaint is in regard to a telegram of August 27, from Warrenton Junction. Now we are coming to the time when General Porter, having a clearer insight as to what was going on, and of the method in which the campaign was being conducted, could not help expressing his natural instincts, as it seems to me, as a soldier, and he indulged in a little criticism upon the performances which were so startling and so different from the theories of war upon which, I suppose, he had been educated. At page 88 of the statement this dispatch inclosed an order from General Pope, which I will presently refer to: but this is what is complained of:

WARRENTON, 27TH—p. m.

To General BURNSIDE:

Morell left his medicine, ammunition, and baggage at Kelly's Ford; can you have it hauled to Fredericksburg and stored?

General Porter was looking all this time to General Burnside for supplies:

His wagons were all sent to you for grain and ammunition. I have sent back to you every man of the First and Sixth New York Cavalry, except what has been sent to Gainesville. I will get them to you after a while. *Everything here is at sixes and sevens, and I find I am to take care of myself in every respect.* OUR LINE OF COMMUNICATION HAS TAKEN CARE OF ITSELF, IN COMPLIANCE WITH ORDERS. The army has not three days' provisions. The enemy captured all Pope's and other clothing; *and from McDowell the same, including liquors.*

Now, what does he refer to there? Is it not absolutely true? What had happened? Jackson had got in behind Pope while Pope was look-

ing out for him at the front, and while disaster and shame were thus lurking in the rear; there they were, Stuart at Catlett's Station, in the shape of disaster, and Jackson, as shame, at Manassas. Everything *was* at "sixes and sevens." Had not the commanding general proclaimed that he was going to act on the understanding that lines of communication and retreat should take care of themselves, that he would not take care of them, and that his subordinate commanders should not take care of them? This was one of the results of his novel policy. Was it criminal? Was it more than human for General Porter, in writing to General Burnside, with whom his communication was lawful—communicating, if you please, with the President, who was the superior of Pope—to indulge in this irresistible and spontaneous criticism upon the results of this novel method of warfare, which had here for the first time been inaugurated and so forcibly illustrated? You observe General Pope's very words in his proclamation are the words that Porter uses in this dispatch.

The next one that they complain of is that of August 27, 4 p. m., on page 89 of the statement:

I send you the last order from General Pope, which indicates the future as well as the present. Wagons are rolling along rapidly to the rear, as if a mighty power was propelling them. I see no cause of alarm, though this may cause it.

That referred to the wagons by the thousand that were pouring on towards Alexandria, rolling night and day over those roads, especially that road from Warrenton Junction to Bristoe, which we have so carefully examined. Had he any authority for the statement? This order from General Pope, which it transmitted, contained the very facts upon which he was commenting. Let me read it. Here is the order from General Pope, directing the flight of all wagons and of all trains towards Alexandria:

HEADQUARTERS OF ARMY OF VIRGINIA,
Warrenton Junction, August 27th, 1862.

* * * * * * *

Major-General Banks, as soon as he arrives at Warrenton Junction, will assume the charge of the trains, and cover their movement towards Manassas Junction. The train of his own corps, under escort of two regiments of infantry and a battery of artillery, will pursue the road south of the railroad, which conducts into the rear of Manassas Junction. As soon as the trains have passed Warrenton Junction he will take post behind Cedar Run, covering the fords and bridges of that stream, and holding the position as long as possible. He will cause all the railroad trains to be loaded with the public and private stores now here, and run them back towards Manassas Junction as far as the railroad is practicable. Wherever a bridge is burned, so as to impede the further passage of the railroad trains, he will assemble them all as near together as possible, and protect them with his command until the bridges are rebuilt. If the enemy is too strong before him, before the bridges can be repaired, he will be careful to destroy entirely the train, locomotives, and stores, before he falls back in the direction of Manassas Junction.

This was an order for a precipitate and universal flight in the direction of Alexandria of all wagon trains. It was the execution of that order that blocked up the road on the night of the 27th, so that General Porter, up to three o'clock, could not move. Now, was it a serious or wicked criticism for General Porter, writing as he was this message to Burnside, to say:

Wagons are rolling along rapidly to the rear as if a mighty power was propelling them. I see no cause of alarm, though this may cause it.

This, also, is seriously complained of in the same telegram:

I found a vast difference between these troops and ours; but I suppose they were new, as to-day they burned their clothes, &c., when there was not the least cause. I

hear that they are much demoralized, and needed some good troops to give them heart and, I think, head. We are working now to get behind Bull Run, and I presume will be there in a few days, if strategy don't use us up.

How true that was! How prophetic! Strategy did use them up, and those that were not used up did upon the night of the 30th quietly withdraw behind Bull Run and take their places in safety on the heights of Centreville.

The strategy is magnificent, and tactics in the inverse proportion. I would like some of my ambulances. I would like also to be ordered to return to Fredericksburg, to push toward Hanover, or, with a larger force, to push towards Orange Court-House.

Now, what does that mean? A suggestion of what I have heard military men say was, even in the then wretched situation, a wise expedient. What was it? To strike behind Lee, at his lines of communication, and compel his instantaneous retreat. If that had been done, all this useless slaughter of the 29th and 30th would have been avoided. That was Porter's suggestion, of which they complained. That was his his idea of getting away and doing something; of dealing an effectual blow at the enemy, with whom they were all contending.

I do not doubt the enemy have a large amount of supplies provided for them, and I believe they have a contempt for the Army of Virginia.

Do you not believe it? What else but such a sentiment could have inspired Jackson to make that dash through Thoroughfare Gap, and put himself in the trap in which he did put himself, surrounded by the Army of Virginia? Facts are to be looked at in analyzing this case, now that the passions of the war are over. Is it not true? What but that very sentiment could have brought Jackson in there? Will any military man say that if he had not entertained such a sentiment he would have dared to do so? He had read Pope's proclamation—to him a proclamation as well as to Pope's own army—which notified him that Pope was not going to look behind him, nor at his base of supplies; that he was to look before and not behind, because disaster and shame lurked in the rear. He knew that there was a great supply depot at Manassas, and in he went, in obedience to General Pope's invitation, and destroyed it utterly.

I wish myself away from it, with all our old Army of the Potomac, and so do our companions.

What does that mean? Has he not suggested what he meant, that he would like to be ordered to make a strike in Lee's rear?

I would like also to be ordered to return to Fredericksburg, to push towards Hanover, or, with a larger force, to push towards Orange Court House. I wish Sumner was at Washington, and up near the Monocacy, with good batteries. I do not doubt the enemy have a large amount of supplies provided for them, and I believe they have a contempt for the Army of Virginia. I wish myself away from it, with all our old Army of the Potomac, and so do our companions. I was informed to-day by the best authority that, in opposition to General Pope's views, this army was pushed out to save the Army of the Potomac, an army that could take care of itself. Pope says he long since wanted to go behind the Occoquan. I am in great need of the ambulances, and the officers need medicines, which, for want of transportation, were left behind. I hear many of the sick of our corps are in houses by the road—very sick, I think. There is no fear of an enemy crossing the Rappahannock. The cavalry are all in the advance of the rebel army. At Kelly's and Barnett's Fords much property was left, in consequence of the wagons going down for grain, &c. If you can push up the grain to-night, please do so, direct to this place. There is no grain here or anywhere, and this army is wretchedly supplied in that line. Pope says he never could get enough. Most of this is private, but if you can get me away, please do so.

What does he refer to? Has he not stated what it referred to? Has he not laid out principles of counter-attack, which, if acted upon, would have avoided the partial destruction of this army?

Well, what is the next that is complained of? It is the dispatch of August 28, 9.30 a. m., at Bristoe.

I hope all goes well near Washington.

Now, McClellan was back, near Washington.

I think there need be no cause of fear for us. I feel as if on my own way now, and thus far have kept my command and trains well up. More supplies than I supposed on hand have been brought, but none to spare, and we must make connection soon. I hope for the best, and my lucky star is always up about my birthday, the 31st, and hope Mc's is up also. You will hear of us soon by way of Alexandria.

That is complained of as a very contemptuous reference to the movements of the army. "You will hear of us soon by way of Alexandria." I want, in that connection, to read to you a passage from General Pope's report to the Committee on the Conduct of the War, at page 172, containing, as it seems to me, a passage bearing on this. Three years afterwards, when his passions were somewhat cooled, and he had got over the excitement of the campaign, at least, he makes this confession, giving an account of this campaign of the Army of Virginia:

At no time could I have hoped to fight a successful battle with the immensely superior force of the army which confronted me, and which was able at any time to outflank me, and bear my little army to the dust.

Is not that an extraordinary statement after all the boasting proclamations of the campaign? This is a cool statement of fact three years afterwards. Of course, he knew, and everybody knew, that he might be looked for, as is here stated by Porter, and as the fact turns out, by way of Alexandria. What else could possibly be hoped for in the situation, as it was on the morning of the 28th? Then they complain of this:

All that talk about bagging Jackson, &c., was bosh.

Well, it had so turned out, had it not?

That enormous gap—Manassas—was left open and the enemy jumped through; and the story of McDowell having cut off Longstreet had no good foundation. The enemy have destroyed all our bridges, burnt trains, &c., and made this army rush back to look at its line of communication, and find us bare of subsistence. We are far from Alexandria, considering the means of transportation. Your supply train of forty wagons is here, but I can't find them. There is a report that Jackson is at Centreville, which you can believe or not.

There is a sneer in that. But is it not justified? This was at Manassas, at 2 p. m. of the 28th. The next morning the raid by Longstreet, who was cut off, took place. It shows that General Porter's sagacity and soldierly instinct led him to see, and foresee, the situation in a clear manner, the information of which, to the government, was of the greatest utility. Again is his dispatch of 6 a. m., on the 29th, at Bristoe:

I shall be off in half an hour. The messenger who brought this says the enemy had been at Centreville, and pickets were found there last night.

Sigel had severe fight last night; took many prisoners; Banks is at Warrenton Junction; McDowell near Gainesville; Heintzelman and Reno at Centreville, where they marched yesterday, and Pope went to Centreville with the last two as a bodyguard.

There is the only personal reflection that I can find in these dispatches. It seems to me to be very harmless and innocent.

At the time, not knowing where was the enemy, and when Sigel was fighting within eight miles of him, and in sight. Comment is unnecessary.

The enormous trains are still rolling on, many animals are not being watered for fifty hours; I shall be out of provisions to-morrow night; your train of forty wagons cannot be found.

I hope Mac's at work, and we will soon get ordered out of this. It would seem from proper statements of the enemy that he was wandering around loose; but I expect they know what they are doing, which is more than any one here or anywhere knows.

Is that not true? What had just happened? What was true that morning? What is sworn to by General McDowell as being true during all that campaign from the 12th, when he went to join General Pope, up to the 29th, when this dispatch was written? General McDowell swore before you at Governor's Island that on all these days, from August 12 to August 29, he and General Pope were hunting for each other a good deal. Now, does not that justify this observation, that knowing what other people are doing is "more than any one here knows"? This was written at the very time when McDowell was taking his famous ride, when Pope himself was saying, "I have not been able to find out anything about McDowell for a long time, or until a late hour this morning."

I submit that at this late day, when we look at these things coolly and dispassionately, there was no wickedness, no malice, no evil animus in these dispatches. They were almost irresistibly prompted and called forth by the extraordinary situation; they were confidential to Burnside and the President. General Burnside testified that it never occurred to him that General Porter in writing them had any evil motive or purpose towards General Pope; he only thought that it showed that General Porter felt about the commanding general as everybody else did, a certain distrust in consequence of his new methods of warfare practically carried out. It is stated in the statement, and it may not be improper to repeat it here, that the President thanked General Porter personally for those very telegrams on the battlefield at Antietam, where he met him. Now, we say that if you want to find General Porter's animus in these dispatches you must find it in what he was doing at this time, as evidenced by the dispatches, working to his utmost, night and day, pressing forward with irresistible vigor, as it seems, and with a wise application of what he knew of the rules of war. However he may have felt about General Pope, these very telegrams demonstrate that all the time he did his whole duty. What more is wanted? Did not the authorities at Washington think so? Why was it that the week after they put him in command of 18,000 troops in the defense of the fortifications at Washington? Why was it that they left him in command afterwards during the great battle of Antietam, and only checked his course when they were pursuing the enemy after Antietam down towards Fredericksburg? Those are questions that are very hard to answer. I do not wish to discuss this question of animus further. I only want to say that actions, as the Recorder says, speak louder than words, and if you want Porter's animus you must find it in the whole history of his life; you must find it in all his record from the time he left this Academy, all through the war with Mexico, upon the Peninsula, where he achieved great and glorious deeds; you must find it in that day of the 30th; yes, and in this day of the 29th, which is among his proudest, and will stand in history as one of his wisest and best days.

In closing this case, I must refer, by way of general observation, to certain evidence that has been introduced unnecessarily, as it seems to me. The facts nobody can complain of; but when it comes down to small scandals, is it not better to reject them, as Judge-Advocate Holt rejected them—this evidence of Lord and Ormsby, and their absurd stories of what they say took place in General Porter's quarters in Washington during his trial there? There he was one day in great excitement coming in from the trial. Do you doubt, on what you know now, that he had cause for immense excitement? He is a very cool man, but do you question that his blood must have been up and that all there was in him of indignation and rage was stirred to its utmost depths? They said that they heard him say, "I war'n't loyal to Pope.

I was loyal to McClellan." Well, what was that? Was it addressed to them? No; it was an exclamation, excited and wrathful. What did it mean? Did it not mean simply an outbreak of wrath, that he could not contain, at something that had been said or done at the court-martial that was trying him that day? Instead of being a statement, a proposition, an admission, a confession, as it is claimed, it was a wrathful repudiation of the idea, and is incapable of any other construction. I will not dwell upon that. The Judge-Advocate rejected it. Lord and Ormsby swore each other to secrecy, and then ran and told the Judge-Advocate, and he treated it with the contempt that it deserved. Yet that which could not be used in the days of the heat and passion of war is brought in here to serve a certain purpose, in this era of peace and good-will. Then, what do you think of Dr. Faxon's story? Was it necessary to bring in these absurdities? Dr. Faxon, who had heard that there was a charge against General Porter of being dilatory on the march from Warrenton Junction to Bristoe, comes and testifies that as he was marching along with his regiment, going through Bristoe, at two o'clock in the afternoon, he passed where General Porter was standing at his headquarters with some gentlemen, one hundred feet off, and although his regiment did not stop, although they went tramping along on the road, he heard General Porter say to one of his aides that he "didn't care a damn if they didn't get there." But they had got to Bristoe already; it was beyond Bristoe, at two o'clock, where General Porter had arrived at eight in the morning, that this took place. I think that doctor had better have been left in charge of his patients in Massachusetts. Then, what do you think of John Bond? He was sent to carry rations up the Sudley road on the afternoon of the 29th, and he saw a man who somebody told him was General Porter, and General Porter asked him how the battle goes, and he made an explanation of how the battle went. He described General Porter's person, that he had a moustache and no beard, that he had a hat and a major-general's uniform; but it turns out that he had a cap and a full beard, and no major-general's uniform at all. Now, might not John Bond have better been left carrying rations to the end of his days than to have been called here? And Bowers, the scout. The learned Recorder tries to find points of distinction between a scout and a spy. Well, Bowers was at headquarters one day when General Porter was surrounded by his staff. Porter says, "General Pope is coming through this command this afternoon, and I don't want any attention paid to him"—absolutely denied by all the survivors of his staff. Was there ever any more ridiculous stuff than that sought to be imported into a serious controversy? I suppose that all these witnesses are absolutely worthless in every point of view.

And now, if the Board please, enough has been said.

The fate of the petitioner is in your hands. His sufferings under this sentence for the last sixteen years have been peculiar, unlike those that any other general or soldier has ever sustained. I do not propose to depict them; they cannot be exaggerated by any language. Only eminent soldiers, such as compose this Board, can fully realize and appreciate them. He is not the only person who now stands awaiting your judgment; not only he, but his family and his comrades in arms, that glorious Fifth Army Corps, which never yet met without reaffirming their faith in his innocence, the whole Army, as I believe, and every faithful man who has ever been connected with it stands expecting and hoping for the restoration of his good name and fame; because, it is not his good name and fame only that is concerned, but the Army's and the country's. I believe that this nation is too great, that it is too

magnanimous, to suffer the continuation of such a wrong when once it has been ascertained. If the exigences of those times required that this shame and contumely should be borne by him during all this interval, his patriotism and his loyalty have stood the test. Nobody has ever heard a whisper or a murmur against his country, or its cause, from him. He has always been faithful. He knew, or hoped he knew that time would bring his relief. There were historical instances which would justify the hope. There was the case of brave old Admiral Cochrane, Earl of Dundonald, who suffered a similar but by no means equal ignominy, convicted of a crime of which he was wholly ignorant and innocent, in 1814; and he had to live until 1832 before the brand of infamy was taken from him. But the British nation was magnanimous, and restored him at last to all the honors and titles of which he had been unjustly deprived. If any such indirect purpose as I have referred to made Porter's punishment and humiliation necessary; if he was a sacrifice to discipline, has it not answered its purpose? If it was necessary to strike down an innocent man to enforce discipline upon suspected men in the Army of the Potomac, has it not done its work? Look at them under all commanders, before and certainly afterwards—look at them from Antietam to the last struggles in the Wilderness, under the successive commands of McClellan, Burnside, Hooker, Meade, and Grant. When, anywhere, did a man of them fail to do his whole duty?

We think the time has come at last for this gross wrong to the petitioner to be righted. He has looked for it hopefully and faithfully for the last sixteen years. He has looked for it because he was sure of his innocence, because he had absolute faith in his cause, faith in his country, faith in justice, faith in God. The question now is, whether God and justice and country shall all forsake him. We have no fears. We leave the result confidently with you. It seems to me that the time and place are both propitious for his vindication. In ten days more will be the anniversary of his humiliation. Here, where his military life began, is the place where his star should be restored to its true and native luster, and so in his name, and the name of the brave army corps which he commanded, in the name of the Army which he did his best to honor, in the name of truth insulted, and of justice outraged, we demand for the petitioner full and complete reparation.

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